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on Civil and
Political Rights**

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Sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 137th MEETING

Held at Headquarters, New York,
on Wednesday, 18 April 1979, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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consolidated in a single corrigendum, to be issued shortly after the end of the
session.

The meeting was called to order at 10.50 a.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

1. The CHAIRMAN announced that the officers of the Committee had held a meeting to consider the organization of work for the rest of the session in the light of the progress made to date.
2. Since there were several items pending and more time would be required for the consideration of communications, the officers recommended that consideration of the reports submitted by Cyprus and the Syrian Arab Republic should be postponed until the following session, which was to be held in Geneva.
3. It was so decided.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 AND 1978 (continued)

Romania (CCPR/C/1/Add.33) (continued)

4. Mr. TOMUSCHAT, referring to the opinions expressed in the report submitted by Romania concerning the role of the Committee and the appeal made to the Committee to focus its attention on those areas which were directly related to human rights, said that, although no one denied that the rights and freedoms laid down in the International Covenant on Civil and Political Rights formed an indissoluble whole with the social, economic and cultural rights guaranteed in the parallel 1966 Covenant, the Committee's mandate was limited to monitoring compliance by States parties to the International Covenant on Civil and Political Rights with the provisions of that Covenant.
5. Although those restrictions on the Committee's work might appear inconvenient or inappropriate, they were also beneficial. It was obvious that any war was a denial of the enjoyment of human rights. Nevertheless, it was inconceivable that the Committee should examine the causes of wars and establish mechanisms designed to prevent them. Other bodies and, in fact, the entire United Nations machinery, had been set up for that purpose. On the other hand, there were few, if any, bodies which concerned themselves with freedom of speech, freedom of religion or freedom to leave one's country. In that area it was the Committee's responsibility to monitor as objectively and impartially as possible the observance of the rights laid down in the Covenant.
6. Again by way of general observation, he pointed out that, as far as the Committee was concerned, there were no socialist, capitalist, bourgeois or developing countries. The Covenant mentioned only States parties, which had undertaken to comply with its provisions. No State party could claim that it was complying with those provisions simply by providing itself with a certain governmental structure. When the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights had been drafted, the international community had recognized the need to establish

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(Mr. Tomuschat)

international monitoring machinery in order to strengthen the enjoyment of human rights at the national level, and every State party should demonstrate in detail that it was scrupulously complying with each and every one of the provisions laid down in the Covenant.

7. Other members of the Committee had indicated that the scope of article 2, paragraph 1, and of article 26 of the Covenant was much wider than that of article 17 of the Romanian Constitution (p. 4 of the report). The Covenant provided that no person should be subjected to discrimination on political grounds. That principle inevitably affected the entire constitutional framework and implied a certain degree of political pluralism. It could not, therefore, be maintained that political pluralism was an ideological invention which was not to be found in the Covenant. National unity could not justify the suppression of all opinions other than those considered to be correct.

8. With regard to article 2, paragraph 3, of the Covenant, he said that he would like additional information to be provided on the remedies available to individuals in respect of the denial of specific rights of an administrative nature, such as, for example, the denial of a passport or of the right to leave the country. He also wished to know whether article 2 of the Covenant had been incorporated into the domestic legal order and, if not, whether the national legislation was always construed in such a way as to bring it into harmony with the provisions of the Covenant.

9. Referring to article 8 of the Covenant, he asked whether at any stage since the entry into force of the Covenant, the competent ILO bodies had raised objections to existing regulations and practices in Romania.

10. With regard to article 12 of the Covenant and the individual's freedom to choose his residence, he asked whether it was true that Decree No. 24, of 5 November 1976, placed far-reaching restrictions on that right and, if so, to how many persons it had been applied. According to article 12, paragraph 2, everyone should be free to leave any country, including his own. Although paragraph 3 provided for possible restrictions, those restrictions could not be interpreted in such a way that an application to leave the country constituted an illegal act. That was contrary to the spirit of the Covenant and he therefore hoped that the representative of Romania would provide formal assurances that no person would be subject to retaliatory measures simply for having expressed a desire to leave the country.

11. In that connexion, he pointed out that, while it was difficult to agree on what was meant by "family" reunion, it would be useful to know what criteria were applied in that respect in Romania. In addition to imposing great hardship on the person concerned, emigration constituted a serious loss for the country. Thus, from every point of view, it would be more desirable if regular visits to relations living abroad were allowed instead of emigration. He asked for details of Decree No. 156/1970, concerning the passport system, since the report did not explain in what cases Romanian citizens were permitted to travel abroad. Furthermore, he considered that the penalty imposed for illegally crossing the border was excessive.

(Mr. Tomuschat)

12. In connexion with article 13 of the Covenant, concerning the expulsion of aliens from the territory of a State party, he said that the report lacked the necessary information.

13. With regard to article 18 of the Covenant, concerning freedom of religion, he pointed out that the mass of information supplied in the report seemed to indicate that there was no discrimination in that area. He merely wished to know whether all religions were given the same treatment and, specifically, whether the Roman Catholic Church enjoyed the same rights as other churches. Similarly, he asked whether parents were free to bring up their children in accordance with their own religious and moral convictions. In that respect, he agreed with the opinion expressed by Mr. Bouziri concerning article 101 of the Family Code (p. 28 of the report).

14. With reference to article 19 of the Covenant, he asked how the right to seek and receive information was implemented in Romania.

15. One particularly delicate point related to complaints which could be made by citizens to United Nations bodies or foreign Governments. It was true that such complaints might not fully reflect the real situation, but persons making them should not be penalized in any way; it would be useful if Romania could supply information on that matter.

16. With regard to article 22 of the Covenant, the report submitted by Romania referred to article 27 of the Constitution (p. 25), but gave no further details concerning ordinary legislation currently in force. According to information available to him, members of minority groups were not entitled to found associations of their own and, apparently, were prohibited from establishing religious, cultural, scientific, economic or other associations. They were thus left with the sole option of joining subunits of the Communist Party. If that was the case, he wondered how that prohibition, which considerably impeded the autonomous development of minority groups, could be reconciled with article 27 of the Constitution.

17. Again with regard to article 22, and specifically with regard to trade union organizations, he asked how the latter were organized in Romania and whether any statute set forth their rights and obligations. He also asked whether a group of like-minded people were entitled to establish a trade union of their own and whether the competent bodies of ILO had at any time expressed concern about the situation in Romania. The Committee should take account of the findings of ILO, since article 22, paragraph 3, of the Covenant expressly stated that the guarantees provided for in the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize should be respected.

18. With regard to article 23, paragraph 2, of the Covenant, which laid down the right of men and women to marry and to found a family, he stressed that no restrictions had been placed on that rule and the right must therefore be safeguarded under all circumstances. However, it seemed that the Romanian authorities often withheld or delayed granting the authorization required for a

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citizen of that country to marry a foreigner; such a procedure was unjustifiable. On the basis of an interpretation of articles 12 and 23 of the Covenant in conjunction with each other, a couple of mixed nationality was free to choose its place of residence. Romania should therefore carefully review its current legislation and policies with regard to the granting of authorizations to marry foreigners and to cross borders. Tremendous progress in the enjoyment of human rights could easily be made in that area.

19. With regard to article 24 of the Covenant, he expressed satisfaction with the measures taken by Romania to ensure that a child was raised by his mother, and with measures providing for paid maternity leave and for the first year spent at home for the purposes of child care to be regarded as a working year. In that respect, Romania's experience should be taken as an example.

20. With regard to article 27 of the Covenant, he asked whether the rights and obligations of minorities were set forth in a legal instrument, since he felt that that helped to promote legal certainty and clarity and contributed towards a fuller development of the expression of the specific character of ethnic minorities, which was in the interest of the country as a whole.

21. As a final observation, he pointed out that, when considering reports, the members of the Committee tended to emphasize the weaknesses in the legislation of States and not to reflect adequately their positive record. In that sense, it might seem that consideration of the reports lacked objectivity. The Committee, whose mandate consisted in monitoring compliance with the Covenant, was in fact obliged to adopt a critical approach. Moreover, owing to time constraints, it was usually unable to express its satisfaction explicitly in cases where States had lived up to their commitments. That did not mean, however, that the Committee was unaware of positive results.

22. Mr. DIEYE said that it was important for the Committee to stress the functioning of justice, in view of the fact that it must consider different legal systems in each country and see to it that no State took shelter behind a system in order to avoid strict compliance with the Covenant.

23. The functioning of legal institutions made it possible to determine whether human rights were respected. It was, in fact, impossible to assert a right if the courts were not absolutely independent. The fact that judges were elected or appointed did not constitute proof of their independence; it only provided an indication that they were independent. What was really important was that the judge who instituted proceedings should be distinct from the examining judge and the judge who finally handed down the sentence, and, ultimately, it was the extent to which the latter was subordinate to the executive power that determined the degree of independence of the legal system.

(Mr. Dieye)

24. It had been pointed out that persons whose rights had been violated as a result of an administrative act could file a judicial complaint requesting the annulment of that act. He wished to know whether in that case the judge considered the administrative act in the abstract or whether he took into account the higher interest of the system, particularly in cases where there was a conflict between the individual and the Party, since, although one of the principles of socialist systems was the identity of views and interests of the citizens and the State, a conflict of interests could arise.

25. With respect to objections regarding illegality, he wished to know whether they could be raised at all levels of jurisdiction, from the court of first instance to the Supreme Court, and what the implications were.

26. With regard to the filing of a complaint by a person whose rights had been violated as a result of an act of the executive power, he asked whether there was compensation only for physical or also for moral damage.

27. Moreover, he wished to know what type of work was carried out by prisoners while serving their sentences, and whether they received remuneration for that work.

28. With regard to article 11 of the Covenant, the report of Romania (p. 12) indicated that, under Romanian legislation, non-fulfilment of, and the effects of non-compliance with, a contractual obligation were matters of civil law and it was not possible to imprison a debtor for non-fulfilment of his obligations, except where it was determined, in criminal proceedings, that the act of the debtor constituted fraud. In that connexion, he wished to know where the dividing line was, under Romanian penal law, between non-fulfilment of a contractual obligation and fraud.

29. Referring to article 7 of the Covenant, concerning the elimination of inhuman treatment or punishment, and to article 267 of the Penal Code (p. 7), which mentioned "security or corrective training" measures, he requested details regarding measures of that type under Romanian law.

30. With regard to the Declaration on the Elimination of All Forms of Religious Intolerance, adopted at the thirty-fifth session of the Commission on Human Rights, and article 18 of the Covenant, he requested confirmation that there actually was no anti-religious propaganda in Romania.

31. In conclusion, and by way of a general observation, he pointed out that, as soon as a country agreed to submit a situation within its territory to international consideration, to some extent it waived the principle of non-interference in the domestic affairs of States; that was particularly so in the case of human rights, which were the concern of the international community and transcended national boundaries.

32. Mr. KOULISHEV said he felt that the information submitted by Romania was extremely useful for assessing the de jure and de facto human rights situation in Romania and the way in which the Government provided for the subsequent evolution of the protection of human rights. That co-operation with the work of the Committee would undoubtedly bring mutual benefit.

33. The problem of the social, economic and cultural conditions under which human rights were exercised in Romania was of the utmost importance to the Committee, since a solid foundation in that respect was essential for full enjoyment of human rights. Without such a foundation, not even the most perfect system from the legal point of view would be able to make human rights a reality. The report showed how Romanian legislation protected human rights.

34. As to the availability of remedies for the restoration of rights, he wished to have further details concerning Act No. 1/1967, concerning the ruling of the courts on applications filed by persons whose rights had been infringed by illegal administrative acts. In fact, according to article 35 of the Constitution, any person whose rights had been infringed by an unlawful act committed by a State organ might request the competent authorities, in the manner prescribed by law, to void the act and make reparation (p. 5 of the report). It would be helpful to know which competent authorities could be requested to make reparation, what conditions were laid down by the law for voiding the act and for redress for the damage caused, and what steps could be taken in the civil, penal and administrative areas to request restoration of rights. That question also concerned the institution of the public prosecutor, and it would be useful if the delegation of Romania should submit supplementary information in that regard. He also wished to know whether in Romania there was a body similar to the organs of State and popular control for which provision was made in other socialist countries.

35. With regard to the status of foreigners (art. 12 of the Covenant), it was important that reference should be made to the conditions under which the right of asylum was granted in Romania and foreigners were expelled.

36. In conclusion, with regard to article 25 of the Covenant, he observed that, according to the report of Romania (p. 31), voters had the right to recall their deputy at any time in accordance with the procedure laid down by law. He requested further details concerning that question, since it seemed that the procedure applied only to representatives in the National Assembly and it was not clear whether it also covered representatives in the people's councils. It was important to know whether there were referendums and plebiscites in Romania, and whether the population participated in any way in the formulation of laws.

The public meeting rose at 12.05 p.m.