

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



CCPR

Distr.
GENERAL
CCPR/C/SR.109
26 October 1978
ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Fifth session

SUMMARY RECORD OF THE 109th MEETING

held at the Palais des Nations, Geneva
on Tuesday, 24 October 1978, at 3.00 p.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 (agenda item 4)
(continued)

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GE.78-10587

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

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

Union of Soviet Socialist Republics (CCPR/C/1/Add.22) (continued)

1. Mr. KOULISHEV associated himself with the congratulations expressed to the Government of the USSR for having begun a constructive dialogue with the Committee. The report of the Soviet Union, comprising a wealth of detail, contained all the necessary information concerning the implementation of the Covenant and met the requirements of that instrument, of the Committee's provisional rules of procedure and of the general guidelines concerning the form and content of reports to be submitted by States Parties under article 40 of the Covenant. The great competence of the representative of the Soviet Union and his introduction of the report at the previous meeting were further evidence of the Soviet Government's valuable contribution to the Committee's work and clearly showed the very close co-operation which the Committee should maintain with all the States parties to the Covenant.
2. The report of any State Party enriched the Committee's experience, but that of the Soviet Union stood out for two reasons. First, it emanated from a State which had striven for the development of human rights. The October Revolution had played an historic role in that respect by freeing the masses of the people, the workers, from exploitation and oppression and extending to them the enjoyment of human rights, by broadening and deepening human rights and freedoms on the basis of equality and social justice, by uniting in an indivisible whole economic, social and cultural rights on the one hand and civil and political rights on the other, and by establishing the right of peoples to self-determination as an indispensable basis for the enjoyment of human rights. Indeed, the lofty ideals of the October Revolution and the achievements of the World's first socialist State had become a powerful source of inspiration and were reflected in the constitutions of many States and the main international instruments pertaining to human rights, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
3. Second, the report was based on the new USSR Constitution, which had been adopted in 1977. That Fundamental Law, which indicated the achievements of the socialist society during the 60 years of its existence, marked a new step forward in the development of human rights and freedoms in the USSR, established new guarantees for the realization of those rights, and was proof of the dynamic nature of human rights in a socialist society, in other words of the development and progress in parallel with the development of that society.
4. There were a number of questions he would like to ask the representative of the Soviet Government on matters which, he felt, would be of interest to the Committee. The first concerned the incorporation of the provisions of the Covenant into Soviet domestic law, or, in other words, the link that existed between international and domestic law in the USSR. Although the representative of the Soviet Government had largely covered that point in introducing the report, he would like to know, however, whether the law on the conclusion,

implementation and denunciation of treaties, which had been enacted some months before, introduced any new elements, or whether it merely confirmed existing practice in the field. He asked that question because the representative of the Soviet Government had stated that in the USSR various legislative acts provided that international law would prevail in the event of a conflict between municipal and international law.

5. Another feature of the Soviet Constitution that was of great interest was the provisions concerning the principles that governed the Soviet Union's foreign policy (chapter 4, articles 28, 29 and 30). They were significant not only because the principle of human rights and fundamental freedoms was prominently stressed, but also because there was an indisputable link between the enjoyment of human rights and the implementation of the principles of peaceful co-existence among States. As the representative of the Soviet Government had pointed out, there was nowhere that man could enjoy the rights inherent in the human person, however extensive they might be, unless peace was assured. He would therefore welcome information on the legal significance of those principles as constitutional rules.

6. He would also like to have some information concerning the federal system in the Soviet Union and its implications for legal rules pertaining to human rights. Any federal system necessarily made the realization of human rights a more complex matter, and it would therefore be useful if the Committee could be told how competence with respect to legislative instruments in the sphere of human rights was shared between the federal authorities and the constituent Republics: which were the human freedoms that came under the jurisdiction of the federal authorities; which were the human rights and freedoms whose regulation was within the competence of the individual Republics?

7. The consideration of reports from States Parties always gave rise to questions concerning the application of the provisions of article 2 of the Covenant, and the report of the USSR was no exception in that respect. It was stated in the penultimate paragraph on page 4 of that report that "Soviet legislation provides that human rights shall also be protected administratively, as well as by comrades' courts and trade union and other public organizations". Administrative procedures often played a particularly important role in the protection of human rights, especially as avenues of recourse in the event of violation of those rights. He would therefore like to know what administrative procedures applied in the USSR in the event of the violation of human rights and fundamental freedoms. Another important aspect of the arrangements for the protection of human rights, particularly in a socialist society, and one which had been insufficiently explained in the report and on which more information was required, was that of the role of the Procurator's Office.

8. With regard to the equality of rights between men and women that was proclaimed in article 3 of the Covenant, he had been pleased to note from the report that a number of Republics where tradition had hampered the application of that principle had taken special steps to guarantee its observance.

9. Mr. OPSAHL congratulated the representative of the Soviet Union on the contribution which the report he had so brilliantly introduced made to the Committee's work. That report represented a milestone in the history of the international protection of human rights, for its submission had given the lie to the pessimists who had asserted that the socialist States, and particularly the USSR, would never submit to international supervision of the implementation of civil and political rights within their territories and it marked the beginning of a new era of co-operation in the implementation of the Universal Declaration of Human Rights.

10. As a general comment, it could be said that, although the report dealt with all the substantive rights set out in the Covenant, it did not systematically follow the Committee's guidelines - which, admittedly, might be seen as the reflection of a traditional approach to the legal protection of civil and political rights. He had found the brief general presentation of the new Soviet Constitution very interesting and had been most impressed to learn that 140 million Soviet citizens had taken part in the debate on the draft Constitution. He wondered to what extent the provisions of the Covenant, which had already been in force, had been taken into account in the drafting of the new Constitution. He also wondered why the first paragraph on page 2 of the report spoke of the new Constitution as providing for the right to life "a higher and qualitatively unprecedented" level of protection. Was there anything new in that guarantee?

11. The other remarks he had to make concerned the information that had been provided on the application of specific articles of the Covenant.

12. With regard to article 1, which concerned the right of self-determination, he had the impression that the so-called "sovereign rights" of the constituent Republics were necessarily limited by the fact that the Union of Soviet Socialist Republics was "an integral, federal, multinational State". Consequently, he would like to know whether the independent State power that the Union Republics exercised in their own territory and the principle of equality of rights between those Republics were in themselves a real guarantee of the right of self-determination. And, in view of the importance of the matters that came within the jurisdiction of the federal authorities and the leading role of the Communist Party, which was apparently so highly centralized that not even the largest Republic had its own party, he would also like to know just what was meant by "sovereign". How real, therefore, was the right of secession recognized to the Union Republics by article 72 of the Constitution? Could a citizen of any of those Republics campaign publicly for the exercise of that right, or would he render himself liable to prosecution if he did so? Had those Republics which had lost their autonomy during the Second World War fully recovered their rights? He appreciated that, in a multinational State, there were other solutions to the latter problem than the creation of new or the restoration of former autonomous Republics, but, since he gathered that nothing of that nature had in fact been done, he would welcome further information on that point in particular and on the real status of minorities - whether they were called nationalities or ethnic groups - in general. Norway was particularly interested in the situation of indigenous peoples, a large number of which were mentioned on page 29 of the report in connexion with article 27 of the Covenant. Any comments and experience which the Soviet Government might wish to share in that respect would undoubtedly facilitate understanding of what the right of self-determination and the rights of minorities (Covenant, articles 1 and 27 respectively) entailed.

13. The Soviet Union appeared to interpret article 2 of the Covenant, concerning equality of rights and guarantees of legal protection therefor in a somewhat restrictive manner. Under paragraph 1 of that article, States parties gave a double undertaking "to respect and to ensure" the rights recognized in the Covenant. Indeed, it followed from the first two paragraphs of the article that States could not remain entirely passive and content themselves with not violating those rights; they must also actively guarantee them, by legislative or other means. He would therefore like to know whether the representative of the Soviet Government considered that all the rights in question were not only respected, but also ensured.

14. Article 2 also dealt with the vital subject of remedies in the event of violations of human rights. The report was a little too succinct in its description of the Soviet Union's system in that sphere, which he found complex and hard to understand. As Mr. Koulishhev had observed, it would be helpful to have more information on the Procurator's Office, whose various functions had been referred to several times, and which even appeared sometimes to act as a court or judicial authority. He also wished to know - if the "comrades' courts" referred to on page 4 of the report could deal with alleged violations of human rights - whether they could consider violations committed by officials and organs of the State, or only those committed by individuals, in which case a requirement for protection of human rights existed. Furthermore, the meaning of the terms "State organization" and "social organization" for the purposes of the legal protection of human rights was unclear. No direct reference was made to other State organs, such as the police, or to remedies against their action. It was necessary to know to whom they were accountable. In all States such bodies protected the population, which also required protection against their action.

15. Article 35 of the Constitution, quoted in relation to article 3 of the Covenant on equal rights for men and women, was admirable in that it provided a happy compromise between two apparently conflicting principles: that of simply granting equality, either generally or in specific areas, and that of promoting a more effective equality by adopting measures in favour of women in order to overcome existing inequality. He would like to know the position of the Soviet Communist Party on the considerable role which, according to the report, was played by women in public affairs.

16. Referring to the application of article 6, on the right to life, he asked whether the death penalty was really exceptional or whether the list of capital crimes had grown. Was there, as in Norway, some hope of the abolition of that penalty in the foreseeable future? The report indicated that the death penalty was provided for in the existing legislation only as an alternative to deprivation of liberty. Were there, however, no cases in which it was mandatory? He would also like to know how many death sentences had been carried out in recent years.

17. Turning to article 7, which dealt with the prohibition of torture or cruel, inhuman or degrading treatment, he asked how effect was given to that principle in the Soviet legal system. Reference was made to certain provisions of criminal procedure, but the question nevertheless remained of the control of those provisions, particularly in the case of a person deprived of his liberty. What were the remedies for a person detained in a penal establishment or mental institution who wished to complain about what he considered to be inhuman or degrading treatment?

18. With reference to article 8, on the prohibition of slavery, the slave trade and forced labour, it might not be obvious that, as indicated on page 8 of the report, the abolition of private economic exploitation had made impossible any phenomena resembling slavery or forced labour impossible. Some explanation therefore seemed desirable. Similarly, although article 40 of the Constitution was quoted in the report, it would be useful to have some further explanation of the provisions of article 60 of the Constitution on the obligation for all able-bodied persons to work. In that regard, two questions arose which had been discussed in connexion with other international instruments: that of the punishment of persons leading a parasitic way of life (article 209 of the Criminal Code of the RSFSR, as amended and interpreted in practice) and that of the position of a person who wished to leave a collective farm to work elsewhere, the fact that the termination of such a person's membership was allowed only with the consent of the farm management being a question of some concern.

19. Some questions had already been raised with regard to article 9, on the right to liberty and security of person, and he would confine himself to asking whether, in criminal procedure, the control of arrest and detention was the responsibility of the Procurator's Office only, as the law appeared to provide in all cases, whereas the Soviet Constitution also assigned a role in the matter to the courts. It should be noted in that connexion that article 9, paragraph 3 of the Covenant referred to "a judge or other officer authorized by law" - in which case the other officer might be the Procurator's Office - and that article 9, paragraph 4, stipulated that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court ...". Was a second control exercised by a court? According to the report, the maximum length of detention before accusation in a criminal case was ten days for ordinary cases and nine months for exceptional cases. The question had been raised whether those were the maximum periods in all cases, since in at least one recent case much longer periods of detention had been reported. He emphasized that the right to liberty and security of person should be accorded in all cases, and not only in criminal procedure, and that meant that detention, for example, in hospitals or other institutions pending extradition was also covered by the provisions of article 9 of the Covenant, particularly paragraph 4. He asked whether recourse to psychiatry which led to a patient being deprived of his liberty by being kept in a psychiatric hospital was subject to any judicial control. At the previous meeting, plans for reform of the remedies against administrative action had been announced; it was to be hoped that the Committee would be kept informed of developments in that field.

20. He awaited with interest the reply to the question that had been raised about conditions of detention in relation to article 10, on the right of persons deprived of their liberty to be treated with humanity.

21. The report contained no information on the application of article 12, paragraph 3, on the right to liberty of movement, including the right to leave any country, and no question had been asked on the subject. He wished to know whether a person could be indirectly deprived of that right by being deprived of his nationality while abroad or by withdrawal of his passport. What was the exact position?

22. The provisions of article 14 on the equality of all persons before the courts and tribunals, and on the entitlement of all persons to a fair and public hearing were the cornerstone of the legal protection of individuals. The matter had received considerable attention in the report, and a number of questions had been asked on the subject. He noted the reference in the report to the possibility defence counsel had of discussing matters in private with accused persons, he emphasized that that was an obvious right under the Covenant. He asked whether conversations between the accused and his defence counsel depended on the wishes of the defence counsel or on those of the accused. Since reform of the system was envisaged, it would be useful for the Committee to be kept informed.

23. A basic question arose with regard to article 18 on the right to freedom of thought, conscience and religion. Article 52 of the Soviet Constitution allowed the holding of religious services, subject to certain conditions. Article 18 of the Covenant, however, referred expressly not only to worship but also to observance, practice and teaching. To what extent was such freedom protected in the Soviet Union?

24. Some questions had already been asked with regard to article 19 of the Covenant on the right to hold opinions without interference and the right to freedom of expression, and he would confine himself to asking two very simple questions. Was it true that even the possession of a duplicator was subject to special authorization? Was it true that a person could be punished for having expressed the opinion that there was no freedom of opinion in his country on the ground that such a declaration was untrue? That would be paradoxical.

25. Information of a legal nature was provided with regard to article 20 on the prohibition of any propaganda for war or advocacy of racial hatred. He wished to know, however, whether it was true, as was sometimes alleged, that the Soviet authorities had in recent years authorized what would seem to constitute anti-Semitic propaganda.

26. With regard to article 22 on the right to freedom of association with others, he wished to know - bearing in mind that trade unions were among the great mass organizations in the USSR, having 107 million members - whether persons who so desired could establish a parallel trade union, a new trade union, an independent trade union or join such trade unions, or whether, as had sometimes been alleged, they could lose their employment or become subject to imprisonment for that. If that was the case, what was the reason and, in that case, what was the position with regard to the implementation of article 22?

27. Mr. HANGA thanked the Soviet Government and its representative for the information they had provided and said that he proposed to ask a few questions to further the discussion. He wished to know, in particular, whether, following the ratification of the International Covenant on Civil and Political Rights, that instrument now had the status of constitutional law or simply of ordinary law.

28. In order to safeguard the rights of citizens, the Supreme Soviet of the USSR had adopted on 12 April 1968 a decree entitled "Procedure for the consideration of citizens' proposals, statements and complaints". He would like to know the nature of that procedure, and whether it was a judicial procedure or a conciliation procedure.

29. In the report by the Soviet Government, it was stated that public organizations were associated in the implementation and the protection of citizens' rights. What, however, were those public organizations, and what part did they play in the implementation of the provisions of the Covenant on Civil and Political Rights?

30. Article 58 of the Constitution established the right to compensation, presumably material compensation, for damage resulting from unlawful actions by State organizations, public organizations or officials in the performance of their duties. The question arose, in that connexion, whether Soviet law provided for moral compensation and whether, for instance, the victim of an unlawful act committed by a State body could secure publication in the newspapers of a statement that such or such a person had been unjustly condemned and that the authorities had awarded him moral réparation.

31. With regard to the equality of rights of men and women, he wished to know what part women played in public affairs and in political activities.

32. The Soviet Government stated in its report that the right to life was guaranteed by law and by other means. It would be interesting to know what those means, legal or other, were. He would also like to know whether the law played any educational role in the Soviet Union, whether it was such as to influence people not to break the law.

33. With regard to article 10 of the Covenant, the Soviet Government stated that supplementary provisions had been added to the legislation on the penal system with a view to making punishment in general and the system for deprivation of liberty in particular more humane. It would be desirable to know to what offences that legislation applied, and, since the law could not foresee every possible case, what was the role of case-law, i.e., the practice of the courts in the application of the laws. Could, for instance, the courts interpret provisions of the law broadly so as to be capable of application to every case?

34. With regard to recognition of the right to legal capacity (article 16 of the Covenant), there was a distinction to be drawn between legal capacity de jure and legal capacity de facto. What categories of persons did not enjoy legal capacity de facto under Soviet law? The Soviet Government's report mentioned only one, and he would like to know what others there were.

35. With regard to matrimonial relations between spouses, Soviet law established the régime of community of property. As there were other régimes, the question arose for what reasons Soviet law recognized only one. He noted also that article 66 of the Constitution of the USSR showed that the concept of parental authority had been replaced by the concept of a relationship of reciprocity between parents and children.

36. Article 48 of the Constitution showed that the law-making process in the USSR was highly complex. In that connexion, he would like to know what part was played by the people? Could it, directly or indirectly initiate legislation? Did it have the opportunity to discuss proposed laws and could

it make any contribution to their application? What was its role with regard to laws which fell into disuse? The right of citizens to take part in the management and administration of State and public affairs was exercised through people's control bodies. In what area, however, was supervision exercised by such bodies, and who were the members of the people's control bodies? Were they elected or appointed, and according to what criteria? Would such people's control bodies be called upon in the future to take the place of State bodies, so as to give democracy the widest possible extension?

37. According to article 34 of the Constitution, "The equal rights of citizens of the USSR are guaranteed in all fields of economic, political, social, and cultural life." Everyone knew that equality of rights needed to be buttressed by social and economic structures. What, then, was the role of ownership or property? In what way did property rights ensure such equality, in view of the fact that in the USSR there was State property, group property, and personal property? In what way did those various forms of ownership contribute to guaranteeing the de jure and de facto equality of citizens in economic, political and social life?

38. In the courts of the Soviet Union, there was not only a professional but also a popular element. He would like to know what was the function of that popular element, in what manner those who belonged to it were elected or chosen and how they contributed to improving the law and society.

39. In conclusion, he expressed the hope that there would be a constructive dialogue between the Committee and the representatives of the Soviet Government.

40. Mr. PRADO VALLEJO observed that the written report and oral statement showed that the system adopted by the Soviet Union guaranteed social rights, something that was often forgotten by countries concerned to guarantee political rights. Article 58 of the new Constitution provided for compensation for damage resulting from unlawful actions by the State or its organizations or courts.

41. According to the representative of the Soviet Union, a special Decree was necessary for the Covenant on Civil and Political Rights to which the Soviet Union had subscribed to be embodied in its legal system. He would like to know whether the Covenant as a whole did or did not form part of Soviet law.

42. Under article 2 of the Covenant, the States parties undertook to take, where they were not already provided for, in accordance with their constitutional processes, such measures as might be necessary to give effect to the rights recognized in the Covenant. The representative of the Soviet Union had indicated that it had not been necessary to adopt any new measures, since the rights enunciated in the Covenant were already recognized in the domestic legal system of the USSR. The question therefore arose whether a Soviet citizen could invoke the provisions of the Covenant before a Soviet court, in order to obtain the kind of protection guaranteed to him by that international instrument.

43. The Constitution which had been adopted and the report which had been submitted showed that the Soviet citizen's rights were guaranteed. The action of administrative authorities was not, however, always in conformity with the provisions of the law. He would therefore like to request clarification of some

of the articles of the Constitution where a particular interpretation might lead to restriction of recognized rights. Article 47 of the Constitution provided that "Citizens of the USSR, in accordance with the aims of building communism, are guaranteed freedom of scientific, technical, and artistic work." That wording invited the question whether a restrictive interpretation of the expression "in accordance with the aims of building communism" might not lead to restriction of the liberty which the article recognized.

44. Article 50 of the Constitution provided that freedom of speech, of the press, and of assembly was guaranteed to citizens of the USSR "in accordance with the interests of the people and in order to strengthen and develop the socialist system". There again the question arose whether a particular interpretation of the expression cited might lead to limitation of the freedoms guaranteed in the article; and the same question arose in connexion with article 51, which recognized the right of citizens of the USSR to associate in public organizations "in accordance with the aims of building communism".

45. Article 59 of the Constitution provided that "Citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations", which seemed quite natural, since there could be no system that granted rights without implying some duties. The same article, however, went on to provide that the citizen of the USSR was obliged to "comply with the standards of socialist conduct". He would like to know who, within the system, judged whether those standards had been met, what happened when the provision was incorrectly interpreted by the authorities and who decided the scope of the restrictions provided for in the article in question.

46. According to article 157 of the Constitution, "Proceedings in all courts shall be open to the public", and article 12 of the Principles of Civil Procedure provided that sittings should be held in camera only when required, for instance, in order to protect State secrets. That reason for proceeding in camera was not mentioned, however, in article 14 of the Covenant on Civil and Political Rights. He would like to know to what extent the provisions of article 14 of the Covenant and those of article 12 of the Principles of Civil Procedure of the USSR could be regarded as consistent with each other. He hoped that answers to the questions he had raised would lead to fuller comprehension of the written report by the USSR and of the oral statement made by the representative of that country.

47. Mr. TOMUSCHAT expressed his satisfaction that the Government of the USSR had submitted a report full of precise and detailed information, and commended its representative on his instructive statement. He was gratified that the largest of the States Parties to the Covenant was ready to appear before the Committee, in the person of its representative, to listen to the views put forward by the members of the Committee. No State could, in fact, claim that its interpretation and application of the Covenant should be immune to criticism. Finding reasonable solutions to the problems presented by the implementation of the Covenant was a never-ending process in which the Committee had an important part to play, since it alone could find a common denominator in the different concepts of the exercise of human rights and ensure that the Covenant was being applied in a consistent manner.

48. Before considering individual articles, he had some preliminary observations to make. First, the federal system of the USSR comprised a network of relations between the Union and the federal States which was not easy to understand, although many of the evaluations to be made would depend on an understanding of the constitutional system as a whole. For instance, the application of articles 1 and 27 of the Covenant should be considered in relation to articles 70 to 72 of the new Constitution, which might need further explanation. For example, what nations had been granted the right to form a Republic and which others constituted Autonomous Republics, and what were the reasons for their differentiation? It was a difficult matter simply to find out which points required further clarification.

49. Secondly, according to the statement made by the representative of the Soviet Government, the Covenant did not have the status of an act of domestic law. Nevertheless, even if the Covenant did not directly confer rights on the citizens of the Soviet Union and even if a domestic law had to be passed before it could be implemented, States parties had, under article 2, paragraph 3, of the Covenant, an obligation to permit their citizens to invoke the Covenant's provisions. That right would, in fact, appear to be axiomatic within the legal framework established by the Covenant. The Covenant would never become a living constitution of nations if the rights and freedoms it recognized could not be invoked in dealings with State authorities. States parties therefore had to accept, as a normal legal situation, the fact that a citizen could bring a claim against the community based on the provisions of the Covenant. It would be a breach of treaty obligations if States parties were to penalize any such invocation to the Covenant. He would like to have an assurance from the Soviet Government that it would not regard as a punishable offence assertion of the rights and freedoms enshrined in the Covenant.

50. If the Covenant was to become known to everyone, a massive effort would have to be made to publicize its contents; since otherwise little heed would be paid in day-to-day administration to an instrument about which no one knew anything. What steps had been taken therefore to ensure that the text of the Covenant was disseminated throughout the Soviet Union? It had been published in the country's Official Gazette, but who were the readers of that publication? Had the Covenant been translated into the different languages of the Republics? Would it not be desirable to prepare a popular edition of the text? One of the States parties had set a precedent by publishing the Covenant together with its report submitted under article 40. Other Governments should follow that example. The text of the Covenant should be available to all. Otherwise it would be impossible for citizens to claim their rights, which they were entitled to do under article 2, paragraph 3.

51. With regard to article 1 of the Covenant, the report of the USSR stated that each Union Republic retained the right freely to secede from the USSR, under article 72 of the Constitution. He did not believe that it was necessary to grant the right of secession as a matter of principle to Federal States since self-determination could be fully exercised in a federal structure. However, as the Constitution of the USSR explicitly recognized that right, he would like to know how secession could take place in practice. Were there laws regulating the secession procedure? Were citizens allowed to advocate secession, as the corollary to the existence of the right of secession itself? Had any steps been taken in that respect since the Covenant had entered into force and, if so, what had been the attitude of the Soviet authorities to them? He would be grateful for enlightenment on those points.

52. He drew attention to the fact that the formulation of article 2, paragraph 1, and of article 26 of the Covenant was much broader than that of article 34 of the USSR Constitution. The Covenant did not permit any discrimination on the grounds of political opinion. He wondered therefore what was the meaning of the difference he had noticed between the two texts. According to article 6 of the Constitution of the USSR, the leading and guiding force in Soviet society was the Communist Party, which appeared to have the monopoly of political truth. A single party system might perhaps, in certain circumstances, be consistent with the Covenant, provided, however, that the public discussion of matters of public concern was not considered illegal under that system. It would be desirable, therefore, for further light to be thrown on the meaning of article 34 of the new Soviet Constitution.

53. With regard to article 2, paragraph 3, of the Covenant, he had noted with satisfaction article 53 of the new Soviet Constitution, since it gave the impression that administrative acts of any kind could be challenged in the courts. However, a glance at article 154 showed that only civil and penal matters were heard in the courts and tribunals. He understood that there were no administrative tribunals, and would therefore like to know whether Soviet citizens, by invoking the rights and freedoms recognized in the Covenant, could appeal against an administrative ruling, to the existing courts, and whether an action of that kind had ever been brought? If a citizen was denied the right to leave the country, what legal remedies were available to him to appeal against the decision? Cases of that kind involved a conflict between the individual and the State; in what way could such disputes be resolved?

54. With respect to article 3 of the Covenant, the report of the USSR gave the impression that that country had made great efforts to eradicate all vestiges of discrimination against women, and he had noted that with appreciation. As to article 6 of the Covenant, he would like to know what were "the most serious crimes" to which, under the criminal legislation of the Soviet Union, the death penalty still applied. A list of the cases in which the death penalty had been imposed and carried out would be useful.

55. Referring to articles 7 and 10 of the Covenant, he said that he lacked detailed information concerning corrective labour institutions. He would like to know in what cases that type of punishment was inflicted on convicted persons, and whether internment in a labour camp was regarded as a light or severe punishment. Criminologists now believed that punishment should serve to reintegrate the convicted person into society and that the prisoner should therefore remain in contact with his family at least; that meant that the penal institution should not be too far from his former place of residence. He would like to know about the practices in the USSR in that respect. Did condemned persons serve their sentences in a camp fairly close to their home or were they sent far away? Although the report gave some information on that point, he would like to have further clarification of the current de jure and de facto situation.

56. The portion of the report which was devoted to article 9 of the Covenant contained a number of positive elements and suggested that the situation in the Soviet Union with regard to the protection of the rights of the individual involved in criminal proceedings was fairly satisfactory. However, article 9 was not concerned exclusively with criminal charges but with any situation in which a citizen could be deprived of his liberty, as was the case, for instance, of persons declared to be mentally ill and confined to a psychiatric hospital. He wished to be informed as to the procedure under which the decision to intern such persons was taken; was it solely a matter for psychiatrists or was a judicial authority or institution involved? That was a most important point on which article 9, paragraph 4, was quite explicit. It would be helpful for the Committee to know what measures were taken in the Soviet Union to prevent abuses in that respect.

57. The information furnished in relation to article 12 of the Covenant was rather scanty. Under paragraph 3 of that article, the right to freedom of movement could be restricted but only as provided by law and then as a wholly exceptional measure. In general, legal acts restricting the rights guaranteed by the Covenant had to be quite specific; they had to define the conditions of the restriction as precisely as possible in order not to leave any ambiguity. That was why he would like the text of the relevant instruments to be made available to him, as he would otherwise have to reserve his position. It should be emphasized that a person who applied for a visa to leave his country was simply availing himself of a right that was embodied in the Covenant, and, generally speaking, if people could not invoke the Covenant or were sanctioned for doing so, it would be deprived of all substantive value. That was a fundamental principle, and, if anyone had been punished for wishing to leave his country and saying so, he would like to be given an assurance that those occurrences had been accidental and that citizens did have a remedy in such cases.

58. He would like to ask three questions about the paragraphs in the report that were concerned with article 14 of the Covenant. In the first place, article 153 of the Constitution provided that the administration of justice by the courts was supervised by the higher court. He would like to know the exact meaning of the term "supervision". Did it refer simply to procedures of appeal and cassation or did the higher court have the power of giving instructions in individual cases?

59. The second question related to hearings in camera (page 14 of the report) where the concept of State secrets played an important part, although that concept had been left vague and imprecise. In his opinion, the concept of "public order" had to be interpreted very narrowly if it was to be compatible with the spirit of the Covenant and in particular with article 14. Citizens should not be deprived of such a fundamental right as the right to a public hearing simply in the interests of public order.

60. Lastly, he would like to know whether the right of all citizens to a fair hearing applied equally to the comrades' courts referred to on page 4 of the report.

61. The information provided on the implementation of article 17 was satisfactory. However, he would like to know whether the guarantees in question also applied to the intelligence services and whether those services were bound to respect the private life of citizens to the same extent. Were there specific rules of law on wire-tapping and electronic surveillance?

62. The implementation of article 18 raised many questions. First, it was important that the Committee should have the relevant text in full if it was to obtain a clear idea of the situation. He had before him a translation - which might not be a faithful one - of the decree of 23 June 1975 referred to in the report. Article 17 of the decree imposed far-reaching restrictions on religious freedom, since it prohibited a wide range of activities from prayer meetings to the opening of libraries and kindergartens. He found it difficult to understand those restrictions, which were incompatible with the Covenant. In a spirit of collaboration and in order to facilitate future discussion, he therefore requested that the full text of the decree should be made available to the Committee. He would also like to be given some further explanation of the second and third paragraphs on page 20 of the report. He did not think that the right of parents to give their children religious instruction could be effectively exercised unless such instruction was given at school. While it was true that no Church should impose its will on the citizens as a whole, it was equally true that they should have the means to decide what education their children should have.

63. Many questions had been asked about article 19, so he would confine himself to inquiring as to the exact scope of the criminal legislation of the RSFSR (particularly articles 70 and 190 of its Criminal Code), which were concerned with anti-Soviet agitation and propaganda and with slandering of the State. Was an individual allowed to express political opinions in favour of the peaceful change of society, and could citizens address petitions to international bodies without risking a penalty?

64. The right of peaceful assembly, which was guaranteed by article 21 of the Covenant, allowed all citizens to take steps to hold a meeting whenever they deemed it necessary. However, the fifth paragraph on page 21 of the report seemed to interpret the article in a different way, which he found ambiguous and unsatisfactory. The wording of the paragraph, and in particular the expression "... regular ... assemblies are convened" gave the impression that "the right of peaceful assembly" was regarded as an instrument in the hands of the State rather than as an authentic right to be enjoyed by citizens.

65. With respect to the right of association (article 22 of the Covenant), he asked whether Soviet citizens were allowed to form new trade unions, independent of those that already existed. More generally, he would like to know whether there was complete freedom of association or whether the freedom was restricted in certain respects. For instance, would an organization have the right to militate in favour of a parliamentary democracy, which was not contrary to the Covenant, or was the ultimate goal for all of them necessarily the building of communism or socialism?

66. The part of the report that was concerned with article 27 provided a great deal of interesting information. However, he would like to have more particulars in relation to the penultimate paragraph on page 28 concerning the right of citizens to have "their own culture, ... practise their own religion, and use their own mother tongue"; had that right really been conferred upon all the nations that comprised the Soviet State or, as he himself believed, was it denied to Jewish and German communities in the USSR? Were those communities able to maintain cultural contacts with the rest of the world? Were there Jewish and German schools and, if not, how did the Soviet authorities justify their discriminatory treatment of those communities?

67. Mr. LALLAH said that he had only very recently studied the contents of the new Soviet Constitution and, for the time being, would confine himself to initiating the dialogue, since he felt that he did not yet have all the information he needed in order to ask specific and pertinent questions.

68. If the report provided by the Soviet Union was to be viewed in the proper perspective, it should be borne in mind that that country had accomplished a great deal in 60 years, and that its situation at the start had been tragic. Even if the solutions the country had chosen for putting an end to oppression and exploitation were not all completely satisfactory, they did at least exist and the new Constitution was a reflection of the vigour of a dynamic people seeking a better life for the majority. If that collective fervour had had adverse effects on the rights of the individual, efforts should be made to see how the rights of the individual could be better protected in such a society, instead of criticizing the priority given to the collective ideal. The Covenant did not favour one legal system over another, it should encourage respect for human rights within the very diverse systems adopted by the States parties.

69. The question had been raised whether the provisions of the Covenant should form part of the internal law of States. Such an obligation did not appear to be within the spirit of the Covenant, but the substance of the Covenant should, however, be written into the legislation. Chapter 7 of the new Constitution of the USSR did not appear to meet that requirement entirely: perhaps other chapters of the Constitution or other legislative texts filled what appeared to be a gap.

70. Under article 2, paragraph 3 (b), of the Covenant, citizens should have the right to seek a remedy from "competent judicial, administrative or legislative authorities" if the rights recognized in the Covenant were violated; the States parties had therefore undertaken to develop the possibilities of judicial remedy in such a case. He wished to know what legislative and practical measures had been taken by the Soviet Union to guarantee the competence and impartiality of the courts, in view of the fact that justice was dispensed in them by elected judges. In other words, who nominated the candidates for election, and how was the independence of the judges vis-à-vis those who elected them ensured? Might not their impartiality be impaired by the fear of not being re-elected?

71. Another aspect of the problem that was most important from the human rights standpoint was the judiciary's independence from the executive. In that connexion, he would like to know what the judicial functions of the Procurator - appointed by the executive and responsible to the Praesidium - were where human rights were concerned.

72. Article 25 (b) of the Covenant provided that every citizen should have the right not only to vote but also to be elected. He wished to know how the right to be elected was guaranteed to all under the Soviet single-party system; in other words, he asked whether the candidates were designated by the authorities or organizations and whether the electorate merely ratified that choice.

73. The fact that one third of the deputies of the Supreme Soviet and 50 per cent of the members of the local Soviets were women implied that equality of the sexes was not an idle phrase in the Soviet Union. However, he wished to know whether the proportion was as high among Communist Party authorities, and whether responsibilities within the family were shared equitably between the husband and the wife. He would also like to know whether a female Soviet citizen could marry a foreigner under the same conditions as her male counterpart, and whether the foreign spouse enjoyed the same rights under Soviet legislation, whether male or female.

74. Mr. GRAEFRAETH said that several speakers had already referred to the basic problem of the way in which States parties implemented the provisions of the Covenant in the context of their own internal law. Many States, including the Soviet Union, had indicated that those provisions were not incorporated as such in their legislation, but that it was proposed that they should be. However, it would seem that in the legislation of certain republics of the USSR, there were special provisions which, under certain conditions, allowed direct application of the content of international treaties within the framework of Soviet legislation. That was an entirely new approach, of which it would be useful to have some further explanation.

75. The Soviet Union was a multinational State composed of nations which differed widely in their culture, geographical conditions and levels of development. It would be interesting to know how the equality of those very diverse entities was guaranteed in the human rights field. In particular, how was legislative unity achieved in a federal State composed of 15 autonomous republics each of which had its own legislation? The question was all the more relevant in that, in specific situations, the legislations must certainly differ considerably in order to achieve the same result. That was quite clear, for example, from page 6 of the report (additional guarantees in favour of women in the Uzbek SSR) and from page 29 (Measures for the Further Development of the Economy and Culture of the Peoples of the North). It was obvious that in the case of the USSR, but also more generally, it was not sufficient to proclaim equality of rights in order to guarantee such equality in practice; special measures must frequently be taken to ensure that, in practice, discrimination did not occur.

76. It was stressed on page 2 of the report that human rights could only be truly respected in a context of peace. It had already been stated, moreover, with particular reference to colonialism and racism, that the foreign policy of any one country could directly affect the human rights situation in other countries. That was further evidence of the need for positive action by the State to ensure the promotion of human rights.

77. Referring to article 6 of the Covenant, he said that it would be useful to know what had been done in practical terms in the Soviet Union to reduce infant mortality.

78. With regard to article 2, he would like to know the exact legal scope of the "Principles of Criminal Procedure of the USSR" and the "Principles of Civil Procedure of the USSR" referred to on page 4 of the report. Were they binding instruments or simply guidelines?

79. With further reference to article 2 of the Covenant, he noted that article 58 of the Constitution of the USSR was quoted on pages 4 and 5 of the report; that article stated that complaints against the actions of officials, State bodies and public bodies were examined "according to the procedure and within the time-limit established by law". It would be useful to know whether the laws establishing the procedure and the time-limit had already been published and, if not, what was the present legal situation.

80. He also noted that article 34 of the Constitution, quoted on page 4 of the report, gave a far broader and specific content to the concept of equality than was generally the case. In view of the fact that formal application of the same legislation to all did not necessarily ensure enjoyment of equal rights by all, the Committee could usefully study how a socialist system eliminated the de facto discrimination which characterized other systems where only those who had economic power in fact enjoyed their rights.

81. It was clear from pages 5 and 6 of the report that equality of the sexes truly existed in the USSR. In that connexion, he would like to have some explanation of the role played by women in the administration of justice and in the machinery of the State.

82. Finally, with regard to the application of article 14, it would be useful to have fuller information on the operation of the courts and their relations with the Supreme Court.

The meeting rose at 6.25 p.m.