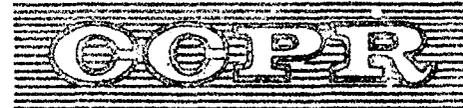


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ON CIVIL AND  
POLITICAL RIGHTS



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Fourteenth session

SUMMARY RECORD OF THE 320th MEETING

Held at the Wissenschaftszentrum, Bonn-Bad Godesberg,  
on Tuesday, 20 October 1981, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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Covenant (continued)

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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 (agenda item 4) (continued)

Japan (continued) (CCPR/C/10/Add.1)

1. Mr. ERMACORA said that on the basis of the information provided in document CCPR/C/10/Add.1, it was difficult to ascertain how the Covenant fitted into the legal system of Japan, whose Constitution dated from 1946. He would like to know what was the legal relationship between the Covenant and the Constitution and whether any reservations regarding the Covenant had been expressed by the Government or by Parliament during the debate relating to its ratification. He would also like to know whether political forces in Japan felt that the Covenant could be integrated without difficulty into the Japanese legal order.
2. With regard to the Civil Liberties Bureau, which did not appear to be a constitutional organ, he would like to know how long it had been in existence, the extent of its powers, the number of cases it dealt with and whether it was a kind of ombudsman. Furthermore, he would welcome information concerning its relationship with the public administration, the judiciary and the legislature. It would also be interesting to know whether the Bureau was really able to implement the human rights provisions of the Constitution, which were similar in substance to those of the Covenant. It seemed that the Constitution itself did not deal with the question of emergency situations mentioned in article 4 of the Covenant. However, the annex to the report referred to a Subversive Activities Prevention Law; he would like to know the meaning of the term "terroristic subversive activity" used in that law and its relationship to the freedom of assembly and association. It would also be useful to know what practical measures were taken to implement the Law in question.
3. With regard to article 17 of the Covenant which dealt, inter alia, with the question of privacy, he thought that the Committee should be informed of the action taken by the Japanese administrative authorities to ensure the protection of individuals against the misuse of data.
4. Referring to article 20 of the Covenant, he asked whether the Japanese Constitution recognized conscientious objection, a matter not dealt with in the report. He would also like to know, with respect to article 10, paragraph 3, of the Covenant, whether the Standard Minimum Rules for the Treatment of Prisoners were applied in Japan and whether those norms were incorporated in the Constitution.
5. As to article 27 of the Covenant, the report simply stated that minorities of the kind mentioned in the Covenant did not exist in Japan. However, the Committee had received information concerning the status of Koreans and Chinese in Japan which might warrant fuller explanation under that article. In addition, there was the question of the position of the Ainus. He had also heard that the people of Okinawa had been the object of special treatment, which was inconsistent with the principle of equal treatment.

6. Mr. SADI noted that, before the Covenant had been ratified by Japan, the national laws of Japan had been scrutinized to ascertain whether they were fully consistent with the provisions of that instrument. However, the first words of the report under consideration seemed to cast doubt on the situation, since it was stated that "Almost all the rights provided for in the Covenant are guaranteed by the Constitution of Japan".

7. Referring to article 2, paragraph 1, of the Covenant, he said that he would welcome information concerning the treatment of certain racial groups.

8. As to article 4 of the Covenant, he noted the statement on page 4 of the report and asked whether a state of public emergency had ever been declared in the history of Japan and, if so, how it had been regulated. He would also like to know what measures would be taken by Japan should such an emergency arise in the future.

9. All countries had laws prohibiting torture. However, he would like to know what safeguards existed in Japan to ensure that such legislation was implemented and whether the security forces were trained to observe such a prohibition.

10. With regard to the question of political bodies, he would welcome information on the system of political parties in Japan and on whether the electoral system was based on the principle of "one man, one vote".

11. Referring to article 20, paragraph 1, of the Covenant, he said that the information provided by Japan should be read in conjunction with article 9 of the Constitution, which renounced war and stated that land, sea and air forces would never be maintained. He knew of no country which had such far-reaching legislation as Japan in that respect.

12. With regard to article 27, he asked what guarantees existed to protect the rights of the minorities referred to in that provision.

13. Lastly, he noted that Japanese legislation seemed to make a distinction between husband and wife as far as the granting of citizenship to children was concerned. That situation was not peculiar to Japan, but he hoped that it would be corrected, since equality between the sexes implied equality between husband and wife.

14. Mr. TOMUSCHAT said that the information provided by States parties in their reports was presumed to reflect the living law of the country concerned and to relate to operative legislation which enabled individuals to avail themselves of remedies if they believed their rights to have been infringed. That seemed to be the case in Japan and, in that connection, he stressed that the individual had an obligation to defend his rights and thereby to maintain the general legal order.

15. With regard to the question of remedies, he noted the reference in the report to two procedures which were available in case of violations of rights by Government agencies and which were substantially similar to the system of redress existing in the Federal Republic of Germany. He wondered, however, whether a general clause existed whereby any dispute between an individual and the public administration could be brought before the courts or whether that remedy was available in only certain specific instances.

16. With regard to the Civil Liberties Bureau referred to on page 3 of the report, he understood that only Japanese nationals could avail themselves of the protection afforded by the Civil Liberties Commissioners, a restriction which seemed to be inconsistent with article 2, paragraph 3, of the Covenant. If Japanese legislation had contained such a restriction prior to the entry into force of the Covenant, he would like to know whether the relevant provision could be assumed to have been superseded by the Covenant.

17. It would be useful to know whether it was costly to appoint lawyers, in what instances a lawyer was necessary, and whether governmental authorization was needed in order to become a lawyer.

18. Referring to article 81 of the Constitution, he asked whether the review of constitutionality of laws was incidental, with tribunals handing down a decision on the constitutionality of a law only in connection with a case brought before them, or whether the issue of the constitutionality of a law could be submitted directly to the Supreme Court. That was an important point, since a remedy designed to safeguard the rights contained in the Constitution was at the same time a remedy designed to safeguard the rights set forth in the Covenant.

19. With regard to the position of aliens, he noted that they enjoyed most of the rights referred to in the Covenant, with a few exceptions such as political rights. He drew attention to the statement on page 2 of the report that certain articles of the Constitution, such as article 13 which provided for the protection of the right to life and liberty, referred only to nationals. It was obvious, however, that that right was also protected under the Covenant, and it should therefore be extended to everyone. The problem seemed to be merely one of language, but he would welcome clarification of the legal situation.

20. The information provided on procedural guarantees under article 14 of the Covenant was too brief. For example, no information was given in the annex to the report concerning specific guarantees such as those referred to in article 14, paragraphs 3 (a) and 3 (f), of the Covenant. With regard to the latter provision, it seemed that persons who were convicted would have to meet the cost of interpretation service, a situation which was inconsistent with the Covenant.

21. Turning to the right of residence, he said that though the right to be admitted to a foreign country was not specifically provided for by the Covenant, an alien, once admitted to a country, should have the right of movement and freedom to choose his residence. The Immigration Control Order seemed to provide a complex system of restriction of free movement of aliens, which in his view required justification under article 12, paragraph 3, of the Covenant. In the light of the guarantees provided by article 12, paragraph 1, that order could perhaps be modified in some respects. There appeared to be some inconsistency between the Immigration Control Order and the provisions of the Covenant, but because the Order was phrased in such a complex way, that inconsistency was difficult to grasp.

22. In connection with articles 7 and 10 of the Covenant, he asked whether there were specific institutions to oversee the prisons in Japan. Other countries had found it useful to associate the public at large with prison inspection by establishing special boards for the purpose. That was a good mechanism and should be commended to the Japanese Government. He also observed that, judging from the information available, there was no rule of positive Japanese law to ensure the implementation of article 10, paragraph 3, concerning the segregation of juvenile offenders from adults. That was an important guarantee for juvenile offenders, and the matter should be brought to the Japanese Government's attention.

23. With regard to article 17 of the Covenant, he asked whether there were any laws regulating intelligence activities or any rules applicable to electronic surveillance and telephone tapping. In his view, specific legal provisions were needed to give effect to that article.

24. He considered the information given in connection with article 19 of the Covenant to be inadequate. It was the Committee's task to assess whether a State was striking a proper balance between the individual safeguards laid down in that article and the public interest, which could be invoked to restrict some of them. Simply stating that those guarantees were provided by law was not sufficient; the Committee must be apprised of restrictions on them in order to have a more accurate picture of the situation.

25. In connection with article 27 of the Covenant, previous speakers had said that, according to their knowledge, Japan did have a minority, namely the Ainus. A question arose as to what constituted a minority, and whether immigrants could acquire minority status. It could be argued that recent immigrants did not constitute a minority, but people whose families had been living in a country for generations were another matter in his view.

26. In conclusion, he welcomed the fact that the Committee's comments would be transmitted to the Japanese Government for due consideration.

27. Mr. HERDOCIA ORTEGA, referring to article 9, paragraph 5, of the Covenant concerning compensation for victims of unlawful arrest or detention, noted that the Japanese report stated that provisions governing such compensation were contained in the Civil Code, the Code of Civil Procedure, and article 25 of the Law concerning the Procedures for Administrative Litigations. The right to reparation was provided for in the criminal laws of many States, but actual compensation was not always forthcoming when governmental acts or arbitrary decisions seriously affected the economic or social well-being of a person. He requested more details on the compensation laws in Japan and perhaps on some specific cases, for such information would be useful to the Committee and to other States seeking advice on how to implement the right to reparation.

28. On the matter of civil liberties, he wished to associate himself with questions asked by previous speakers concerning the role of the Civil Liberties Commissioners referred to on page 3 of the report. Specifically, since the Commissioners had "no compulsory power", how was it possible to provide "a practical solution through a simpler procedure"? What was the scope of that procedure?

29. With reference to article 4, paragraph 2, of the Covenant, which stated that no derogation could be made from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 during a state of emergency), the Japanese report stated that there were no special measures provided for under domestic legislation that might restrict fundamental human rights during such a period. He wished to know whether such an emergency had arisen in the past and, if so, how the rights guaranteed by article 4, paragraph 2, had been protected.

30. The right to life, guaranteed by article 6 of the Covenant, was fundamental, for without it the other human rights did not exist. The report stated that the death penalty was provided for in article 9 of the Penal Code but was sparingly applied in Japan, and that imprisonment was an alternative sanction available for all but one of the 17 offences for which the death penalty could be imposed. He had information, perhaps not totally accurate, from some international organizations concerned with abolition of the death penalty to the effect that there had been 44 executions in Japan from 1974 to 1978 and a further execution in December 1980. According to the Japanese statement at the 1980 Caracas Congress on the Prevention of Crime and the Treatment of Offenders, the Ministry of Justice had recommended that the death penalty should be abolished in the majority of cases, and that recommendation had been welcomed in the Diet during the debate on the Penal Code. There was a growing tendency among States to do away with the death penalty; he requested information as to whether Japan intended to follow suit in the near future.

31. Freedom of assembly and association were governed by article 21, paragraph 1, of the Japanese Constitution, article 28 of which contained specific provisions for labour organizations. According to the report, "Article 7 of the Subversive Activities Prevention Law provides that an organization may be declared to be dissolved", but that such a measure was taken only when there was a clear danger of an organization engaging in "terrorist subversive activity". Yet according to article 22, paragraph 3, of the Covenant, "Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention." Did Japan, a State party to ILO conventions concerning forced labour, freedom of association, and protection of the right to organize and to bargain collectively, have any problems with the application of those conventions? He asked whether any trade unions had been dissolved on account of terrorist subversive activity. Information on the Japanese Government's relations with ILO would also be welcome.

32. Mr. DIEYE said that in his view the Japanese report met the Committee's requirements. Concerning article 1 of the Covenant he was pleased to see that Japan recognized the right of peoples to self-determination and worked towards its realization. However, in the particular cases of Namibia and Palestine, he wondered whether the Japanese Government had done all that it might have done in the international context to ensure that the peoples concerned enjoyed their right to self-determination. In that connection, Mr. Graefrath had inquired about the relations between Japan and South Africa. Had the Japanese Government taken steps to discourage South Africa from maintaining its domination over Namibia?

33. In connection with article 8 of the Covenant, he, like Mr. Hanga, assumed that the reference on page 6 to slavery as a punishment for crime must be an error. He would welcome an explanation on the matter from the Japanese representatives.

34. Noting that Japan's criminal legislation contained a reference to forced labour, he asked how that provision was actually enforced in the prisons and what happened if a person refused to perform such labour.

35. With regard to foreigners, the report referred to the possible detention of foreigners in immigration centres. How and under what conditions were foreigners detained?

36. The Supreme Court appeared to play an important role in the Japanese legal system. Elected for a term of 10 years, the members of the Supreme Court also helped to determine the judges of the lower courts by nominating a list of persons from which the Cabinet chose those judges. In that case, however, how could the lower courts remain truly independent of the Supreme Court? Moreover, he would like to know whether the independence of judges was protected by specific provisions, such as the judicial councils which existed in certain countries.

37. It would also be interesting to learn whether damages were awarded by judicial or administrative magistrates, and also whether Japan had ratified, or was intending to ratify, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid.
38. Mr. AL DOURI said there appeared to be no contradiction between the provisions of the Covenant and Japanese domestic law. The problem seemed to be more one of how to ensure that the provisions of domestic law were actually implemented in the light of the constraints imposed by the country's historical, social and cultural traditions, which might be incompatible with the Covenant. Such considerations were of particular importance as far as the status of women and of underprivileged groups such as foreigners was concerned.
39. The equality of women was guaranteed by article 3 of the Covenant and article 14 of the Japanese Constitution, but their de facto status was unclear. Some information on the number of women representatives in the Diet, the percentage of women pursuing studies at the university level, whether marriages between Japanese women and foreigners led to social difficulties, and the real participation of women in the political life of the country would therefore be welcome.
40. It would also be interesting to know what action the Japanese Government was taking to improve the lot of underprivileged groups in such matters as employment and participation in political, social and cultural life. Some information on how the Government was guaranteeing the freedoms conferred by article 19 of the Covenant, as well as on what political parties were banned, and why, would also be appreciated. The position of racial minorities was worrying, especially as far as family reunion and their right to participate in national life, which had recently been restricted, were concerned. In that connection, it should be borne in mind that many members of racial minorities had resided in Japan for decades and therefore felt themselves entitled to certain rights.
41. He would also like to have some further information on the Civil Liberties Commissioners and on measures to implement articles 1, 4, 11, 13 and 15 of the Covenant. In connection with article 1, he welcomed the action taken by the Japanese Government in receiving the leaders of the Palestine Liberation Organization.
42. Mr. AGUILAR said it was a pity that in the report of Japan, as in those of many other States parties, insufficient attention had been given to indicating the factors affecting the implementation of the rights conferred by the Covenant, despite the fact that article 40, paragraph 2, clearly indicated the need for such information. In the case of Japan, it was his understanding that the problems which had arisen in that respect were largely due to long-standing historical and socio-cultural factors which could not easily be eradicated. It was therefore very important to know what measures were being taken to publicize the contents of the Covenant and to make the general public

aware of the rights conferred by it, especially as far as minority groups and women were concerned. The Government had apparently taken action to protect them, but the socio-cultural background still acted as an obstacle to the implementation of the Covenant. A great educational effort was therefore required to change people's outlook regarding discriminatory practices. In that connection, it would be interesting to have some further information on the activities of the 11,000 Civil Liberties commissioners and, in particular, to know whether they were engaged in promoting an awareness of human rights in schools, universities, trade unions and political parties.

43. It appeared that accused persons did not always enjoy the guarantees laid down in the Covenant. Some further information on that point and on the prison system in general would be welcome. Furthermore, a clarification of the position of persons who had been sentenced to death and were awaiting execution would be appreciated.

44. He inquired whether, in view of the interest in human rights displayed by the Japanese Government, it was considering the possibility of making the declaration under article 41 of the Covenant, and of ratifying the Optional Protocol and, if not, what was preventing it from contemplating such action.

The meeting rose at 5.10 p.m.