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SUMMARY RECORD OF THE 27TH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 17 August 1977, at 11.40 a.m.

Chairman: Mr. MAVROMMATIS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 3) (continued)

Cyprus (CCPR/C/1/Add.6)

1. Mr. YIANGOU (Cyprus), speaking at the invitation of the Chairman, introduced the report submitted by his country under article 40 of the Covenant. Since its accession to independence in 1960, the Republic of Cyprus had championed human rights and fundamental freedoms. It therefore attached great importance to the Covenant, the application of which could do much for the cause of human rights, and had been one of the first States to ratify it. Moreover, his country's Constitution, the supreme law of the Republic, embodied the principal provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and of the 1952 Protocol thereto.
2. Explaining his country's procedure with regard to international treaties, covenants and agreements, he said that the text first went to the Ministry of Foreign Affairs which, after a preliminary examination, sent a copy of it to the Ministries or Departments concerned and to the Attorney-General's Office. It was then studied in the light of existing legislation and of the political and economic situation in the country. The Council of Ministers was empowered under article 169 of the Constitution to sign the instrument in question, which was then transmitted to the House of Representatives for ratification, except in the case of certain instruments such as trade treaties or technical co-operation agreements. The treaty, covenant or agreement ratified then became an integral part of the law of Cyprus and took precedence over every other provision of municipal law, without the need to promulgate rules for its enforcement. In the case of trade treaties, the Executive worked out the necessary rules for application and submitted them to the House of Representatives in the form of bills. The general procedure which he had described had been followed with regard to the Covenant, and it had taken two years. Since then, the provisions of the Covenant had prevailed over those of national law.
3. The report briefly set out the provisions of his country's Constitution which defined the fundamental rights and liberties and provided remedies for their enforcement, the Supreme Court being the court of final appeal. The report did not allude to every article of the Covenant and indicate which constitutional or legislative provision corresponded to it, since it had been prepared at a time when Cyprus was in difficult circumstances and before the Committee had laid down guidelines concerning the structure and content of reports. Nor did it indicate the progress made in the enjoyment of civil and political rights or the difficulties affecting the implementation of the Covenant. Those omissions would probably be made good in his country's next report.
4. Sir Vincent EVANS said that, even bearing in mind its preliminary nature, the report of Cyprus had at first struck him as harbouring a contradiction; after listening to the explanations of the representative of Cyprus, however, the contradiction could be thought to be merely apparent.

5. The report indicated - and the Cyprus representative had also stated - that the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms were now an integral part of the law of Cyprus, as were those of the Covenant. The provisions of parts II and III of the Covenant defining the civil and political rights protected could therefore presumably be invoked before the courts of Cyprus or in relations between citizens and the administrative authorities, and would take precedence over any legislative provision, regulation or administrative decision that was inconsistent with the Covenant. He would like the representative of Cyprus to indicate whether or not that interpretation was correct.

6. The final paragraph of the report contained the following passage: "There are, however, certain articles in the United Nations Covenant for which no corresponding provision exists in the Cyprus Constitution. These are being studied by a special committee of governmental experts which will make recommendations for the gradual implementation of these articles." That suggested that some of the provisions of the Covenant had not yet been fully incorporated in Cypriot legislation, yet the second paragraph of the report seemed to indicate that the Covenant was now an integral part of the law of Cyprus alongside the provisions of part II of the Constitution. That was the contradiction he had mentioned, although, once again, it was probably no more than an apparent one if the following interpretation was correct. Part II of the Constitution of Cyprus contained the provisions on human rights embodied in the European Convention, but certain provisions of the Covenant had no equivalent in that Convention. Moreover, every provision of part II of the Constitution was enforceable under article 35 of that Constitution, which was mentioned in the third paragraph of the report of Cyprus. The task of the special committee of governmental experts mentioned in the fourth paragraph was therefore presumably to ensure that the provisions of the Covenant not yet included in part II of the Cyprus Constitution were incorporated in it in order to acquire the force of constitutional provisions and benefit from the protection provided under article 35; perhaps the committee of experts would also have to prepare the necessary texts corresponding to those provisions of the Covenant which were not directly applicable and required laws or regulations to give them effect. There again, he would be grateful if the Cyprus representative would indicate whether or not his interpretation was correct.

7. Mr. KOULISHEV noted that, under the Cyprus Constitution, the provisions of the Covenant formed an integral part of the national law of Cyprus and had superior force to any other municipal provision; presumably, however, they took precedence over legislative texts and regulations but not over the Constitution. He also noted the explanations given concerning the remedies for the enforcement of civil and political rights. He would like to know what were the articles of the Covenant for which, as indicated in the final paragraph of the report, no corresponding provision existed in the Cyprus Constitution.

8. Mr. MORA ROJAS noted that the first paragraph of the report of Cyprus indicated that most of the civil and political rights embodied in the Covenant were safeguarded by part II of the Constitution; the Committee should be informed, possibly in a subsequent report, of the texts that had been promulgated in order to give effect to that constitutional guarantee. It would also be useful to know what means were used

to ensure the effective application of the provisions relating to fundamental rights and liberties, as mentioned in the third paragraph, and to have information on the procedure followed for declaring a law unconstitutional in the circumstances referred to in that same paragraph. Lastly, he would like to know the articles of the Covenant for which no corresponding provision existed in the Constitution, as indicated in the final paragraph.

9. Mr. URIBE VARGAS asked what place international treaties occupied in the legal structure of Cyprus and whether international instruments prevailed over internal law or were simply applied according to decisions of the courts. He felt particularly justified in raising those questions since the report seemed to be contradictory in that respect, in that it stated that international treaties formed an integral part of the Constitution but went on to say that some articles of the Covenant had not yet been incorporated in the Constitution. The question was therefore whether or not international law was the basis of the legal structure of Cyprus and served as the foundation for the formulation of the provisions of the Constitution and the adoption of laws and administrative regulations. The present-day legal order was undergoing considerable development in that respect, particularly in Europe, and it would be very useful to know the precise situation with regard to human rights in Cyprus. The same question would, of course, arise with regard to other countries.

10. Mr. PRADO VALLEJO noted with satisfaction that, despite the difficult situation they were having to face, the Cyprus authorities were determined to uphold the freedoms and safeguard the rights set out in the Covenant. In particular, the second paragraph of the report stated that the Covenant had superior force to any municipal law in Cyprus - an important point which had rightly caught the attention of Mr. Uribe Vargas.

11. The Committee should be given some clarification concerning the recourse procedures available under articles 29 and 146 of the Constitution, to which reference was made in the third paragraph. According to the report, the provisions of treaties acquired binding force and were therefore incorporated in the law of the land, but he would like to know by what means they were effectively implemented (declarations, precise legal texts, etc.). As other members of the Committee had indicated, details were needed concerning those articles of the Covenant which, according to the fourth paragraph of the report, had not yet been incorporated in the law. He hoped that the various aspects to which he had referred would be elaborated upon in a follow-up report to the preliminary report at present under consideration.

12. Mr. HANGA said he associated himself with the comments made by the preceding speakers. He would also like to have further details about article 169, paragraph 3, of the Constitution, according to which treaty provisions had superior force to municipal law. It would be helpful to know whether that article was sufficient to ensure that international obligations took precedence and whether it might be regarded as the primary element in the incorporation of those obligations in internal law. Moreover, he wondered whether, in the judicial practice of Cyprus, there had been any cases of conflict between international

and national law in which there had been a presumption in favour of international law and in which certain provisions had been invoked for the purpose of ensuring the supremacy of international law. The report submitted provided a good basis for discussion, and he looked forward to hearing the replies to the questions which had been asked.

13. Mr. GRAEFERATH noted that most of the questions which had been asked related to the incorporation of international obligations in Cypriot legislation; indeed, the very structure of the report invited such questions. It should also be pointed out that in many cases it was not sufficient to incorporate the provisions of the Covenant in municipal law. That was particularly true of such articles as article 3, concerning the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant; article 23, concerning the protection of the family; article 24, concerning the protection of children; and article 25, concerning the participation of citizens in public affairs. It was necessary to know not only how those and other provisions had been incorporated in municipal law, but also what had been done in Cyprus to implement them. He hoped that information would be forthcoming on that subject in future reports.

14. Mr. TARNOPOLSKY said he associated himself with the questions and comments which had been advanced by the preceding speakers and emphasized that, as Mr. Graefrath had rightly pointed out, the incorporation of provisions of the Covenant in the Constitution did not necessarily guarantee that they were actually put into effect in national practice.

15. He wished to draw the attention of the members of the Committee to another aspect of the question, which he had already brought up in connexion with the consideration of the report of the Syrian Arab Republic, namely, that it was important to know not only what laws had been adopted in implementation of the provisions of the Covenant, but also what limitations might be placed on them in certain circumstances, such as, for example, for reasons of national security or public order. Many provisions in the Covenant expressly provided for restrictions of that kind; that was the case, in particular, with article 12, paragraph 3; article 14, paragraph 1; article 18, paragraph 3; article 19, paragraph 3; article 21; and article 22, paragraph 2. In other articles, there was an implicit limitation on certain rights: for example, article 17, by the fact of condemning arbitrary or unlawful interference, appeared to imply that in some cases the State could lawfully interfere with the privacy of its citizens. Similarly, article 25 would give reason to believe that the access of citizens to public service could be subjected to reasonable restrictions. It would therefore be helpful to know the limits of application of Cypriot laws with regard to fundamental rights and freedoms.

16. Having regard to the provisions of article 6, paragraph 2, of the Covenant, he would like to know whether the death penalty had been abolished in Cyprus and, if not, what serious crimes carried that penalty.

17. Mr. LALLAH said that, in his opinion, it was generally regrettable that national laws, and particularly national penal codes, made provision only for penalties and not for any preventive measures. Nevertheless, the value of the legal framework set up to protect the enjoyment of fundamental human rights, in conformity with article 40, paragraph 1, of the Covenant, was undeniable.

18. The report gave a concise but very clear picture of the legal system which had been established in Cyprus to ensure the implementation of the Covenant; nevertheless, it called forth a few questions. For example, the statement at the beginning of the report that most of the civil and political rights embodied in the Covenant were safeguarded by the Constitution led one to wonder what rights were not provided for in the Constitution, particularly in view of the fourth paragraph of the report where it was stated that there were certain articles of the Covenant for which no corresponding provision existed in the Cyprus Constitution.

19. He would also like to know whether there were any differences between the provisions of the Constitution and those of the other national laws, and whether there might be any inconsistency between the one and the other. Moreover, assuming that the provisions of the Constitution took precedence over the other laws, it would be useful to know whether those provisions could be amended by a qualified majority or by some special procedure. In the latter case, was it possible to suspend certain parts of the Constitution by an executive act and, if so, could the exercise of certain fundamental rights provided for in the Constitution be suspended by a higher form of executive act? In some legal systems, the suppression of particular basic rights was subject to parliamentary approval, and he would like to know what was the position of the Cyprus legal system in that regard.

20. With regard to the "effective remedies" mentioned in the third paragraph, he wondered what measures were provided for in the Constitution to facilitate access by citizens to those remedies - in other words, whether there was a system of legal or other assistance for protecting the enjoyment of the rights guaranteed to citizens by the Constitution. In that connexion, he observed that, as far as legal aid furnished to citizens by the State was concerned, the developing countries were often more advanced than the developed countries. He would also like to know whether there were any recourse procedures for individuals which were more rapid than those mentioned in the last sentence of the third paragraph. It was well known that in many legal systems, individuals had access to the courts, but procedures were so slow that several years might elapse before their case was dealt with.

21. With reference to the second paragraph, which stated that the International Covenant on Civil and Political Rights had been ratified by Law of the Republic 14/69, he asked whether that instrument was a constitutional law or an ordinary law. Inasmuch as the fundamental rights safeguarded by the Constitution were involved, it should be possible to amend the law in question only by a special procedure similar to that provided for constitutional laws and not by a simple majority vote.

22. Mr. OPSAHL said he was favourably impressed by the fact that, for the purpose of guaranteeing fundamental human rights and freedoms, the Cypriot Constitution was based on two important international instruments, namely, the European Convention

for the Protection of Human Rights and the International Covenant on Civil and Political Rights. However, the Committee should be informed of any possible conflict between those three sets of provisions and of the means used to resolve any problems of co-ordination which might arise.

23. The full report which the Cypriot Government was to prepare at a later stage should be accompanied by the relevant legislative texts. That comment also applied to all other States, as it would be helpful for the Committee to have a compilation of parallel legislative texts which would constitute a source of information that was constantly up to date.

24. Moreover, although that was a delicate matter, he would like to have additional details about the rights conferred upon the State which had concluded it, particularly with regard to intervention, by the Treaty of Establishment of the Republic of Cyprus, referred to in the first paragraph of the report.

25. Like Mr. Graefrath, he thought it was not enough to incorporate the principles of the Covenant in legislation and that the application of those principles depended more on measures of an administrative nature than on laws. For that reason, he would have liked the report of Cyprus to give additional information about such measures.

26. Lastly, he asked whether the Cypriot Government, as a party to the European Convention for the Protection of Human Rights, which gave considerable prominence to the right of individual petition, was not planning to accede to the Optional Protocol, which afforded individuals an international remedy, and whether the special committee of governmental experts referred to in the fourth paragraph of the report was empowered to deal with that question.

The meeting rose at 1.05 p.m.