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SUMMARY RECORD OF THE 29th MEETING

held at the Palais des Nations, Geneva,
on Thursday, 18 August 1977, at 11.20 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)

Tunisia (CCPR/C/1/Add.7) (continued)

1. Mr. HANGA stressed the special importance in Tunisia's legal system of the Code of Personal Status governing matters concerning the family. With regard to the law relating to inheritance, the Tunisian representative had stated that, although certain inequalities existed as a result of historical circumstances, a natural child whose filiation was recognized had the same legal status as a legitimate child. It would be desirable to have further details on that subject and, in particular, to know whether a natural child could apply to the courts for recognition of his filiation and enjoy all the advantages attaching thereto. A similar question could be raised with regard to the situation of children after divorce or following the dissolution of marriage; for instance, was article 31, paragraph 3, of the Code of Personal Status, relating to divorce proceedings, supplemented by any provisions for ensuring the legal protection of children after the dissolution of marriage, in accordance with article 23, paragraph 4, of the Covenant?
2. He inquired whether the right to own property, guaranteed by article 14 of the Constitution, could take various forms; in particular, could it take the form of collective ownership exercised in the interests of society as a whole, and what was its role within the framework of the country's legal institutions?
3. Sir Vincent EVANS said he had noted with great interest the additional information given by the Tunisian representative in his introductory statement. In view of the number and complexity of the observations that had been made by members of the Committee, it would be physically impossible for the Tunisian representative to give all the explanations requested of him, and it was to be hoped that the Tunisian Government would fill in the gaps at a later stage.
4. On the whole, he was encouraged to note the progress Tunisia had made with regard to civil and political rights since its accession to independence, by dint of a dynamic and forward-looking policy expressed, inter alia, in the formulation of the Code of Personal Status and a new attitude towards offenders. Such progress augured well for the dialogue which could be established between the Committee and the Tunisian Government.
5. Some articles of the Constitution called for observations. For instance, article 6, relating to the equal rights of citizens before the law, made no mention of aliens. While it was normal for certain rights, such as the right to vote, to be reserved to the nationals of a country, there were other fields in which aliens should enjoy the same protection as nationals, in accordance with article 26 of the Covenant. He would therefore like to know what was the administrative and legal position of aliens in Tunisia. He also attached great importance to article 8 of the Constitution, concerning freedom of information and ideas and the right of association, and joined those members of the Committee who had requested information on the nature of the legal conditions to which those rights were subject. In particular, he would like to know whether the press was entirely free or whether there was some form of censorship. Also

with regard to article 8 of the Constitution, he recalled that, under articles 2 and 18 of the Covenant, nobody could be discriminated against by reason of his political opinions and everyone was free to manifest his beliefs; he was pleased to note that two persons sentenced for political offences had been pardoned in Tunisia during the last year, but he would appreciate further information concerning those who were still under detention for political reasons and would like to know the precise reasons for their imprisonment.

6. Mr. LALLAH pointed out that many of the provisions in force in Tunisia had their origins in the country's long-standing traditions. In order to be able to evaluate the scope of the guarantees afforded by the Constitution, however, it was necessary to know whether the Constitution could be amended and, if so, by what procedure. Similarly, in what circumstances and by what methods could the fundamental rights and freedoms provided for in the Covenant be restricted or suspended? The suspension of those rights was normally within the province of the Executive, but it was necessary to know to what extent the procedure was subject to parliamentary control.

7. With regard to articles 7 and 19 of the Constitution, he associated himself with the observations made by Mr. Prado Vallejo concerning the need to specify the conditions governing limitations imposed on the enjoyment of rights. Similarly, the Tunisian Government should indicate, by communicating to the Committee the text of the relevant laws, the exceptional cases in which it was permitted to infringe the principle of inviolability of the home and secrecy of correspondence embodied in article 9. The limits provided by law with regard to the right to own property (article 14) also called for clarification.

8. In connexion with article 21 of the Constitution, he asked why the eligibility of a candidate for the National Assembly was determined solely by the Tunisian nationality of the father and not by that of the mother. On a related point, he would appreciate details on the conditions to be met by men and women seeking naturalization, and would particularly like to know the situation of foreign women who married Tunisian nationals, bearing in mind the provisions of article 2, paragraph 1, of the Covenant, which provided for the equality of rights of all citizens without distinction as to sex, and the Code of Personal Status, which stipulated the equality of men and women with regard to family rights.

9. With regard to freedom of association, article 22 of the Covenant had a very broad sense which went beyond the right to form trade unions. Article 8 of the Constitution mentioned neither the forms of association envisaged nor the conditions or restrictions imposed on the exercise of the right of association.

10. Many members of the Committee had requested further details concerning article 12 of the Constitution, on the procedures open to detainees for ensuring their defence; among other things, reference had been made to the possibilities of access on the part of detainees to the courts and to assistance by counsel. He wished to address himself to three aspects of that question: first, to what

extent was the detention of a suspect or of an accused person authorized by Tunisian law and how long could it last, and what legal assistance was afforded to the detainee during the investigation and the period preceding trial? Second, what means of defence were available to a detainee and, third, to which legal institutions did he have access? In particular, he wished to know whether there were special courts for particular political offences, whether it was possible to appeal against their decisions and how the courts of appeal were constituted. It would also be interesting to learn how many appeals had been lodged by detainees during the last few years.

11. Mr. ESPERSEM asked whether the death penalty existed in Tunisia and, if so, which crimes were punishable by it and in what circumstances it had been applied in recent years, and whether there was any right of pardon. With regard to the right of association (article 8 of the Tunisian Constitution), was the formation of a trade union subject to any permission or condition? Were any trade union activities considered illegal (strikes, for example)? Were there any known cases of trade unionists having been found guilty of, or sentenced for, offences against the laws on the formation of trade unions or on trade union membership?

12. Mr. OPSAHL inquired whether the articles of the Tunisian Constitution mentioned in the report (CCPR/C/1/Add.7) were quoted in full or in a summarized form. Moreover, now that the Covenant had come into force, would Tunisia be willing to allow international observers to attend possible political trials?

13. The CHAIRMAN asked precisely which instrument was meant in the fourth paragraph of section II of the report of Tunisia, where it referred to the "New York Convention of 1968".

14. Mr. BEN MASSOUAD (Tunisia), speaking at the invitation of the Chairman, explained that the articles of the Tunisian Constitution mentioned in the report were quoted in full and not in an abridged form. He said he would reply to the questions in the order in which they had been put, while attempting to group them together by subject.

15. In the first paragraph of the provisional report the words "or reservations" should be deleted, as the Covenant had been approved without reservations.

16. There was no need for concern with regard to the limitations and restrictions imposed by law on the principles set out in the Constitution, for they were decided upon by the Legislative Assembly and hence were the expression of the will of the people, and their purpose was to ensure respect for the liberty of all and the maintenance of public order. It was in the interest of public order, for example, that those who wished to work should not be prevented from doing so, that those who wished to move about the streets should be able to do so, etc. With regard to freedom of opinion, expression, the press, etc., (article 8), there was a law concerning the press, the text of which would be communicated later to the Committee. Non-profit-making associations such as sports and cultural organizations had to be authorized by the Ministry of the Interior, which satisfied itself that they were indeed designed for the pursuit of their appointed objectives. Article 9 guaranteed the inviolability of the home and

secrecy of correspondence, save in the exceptional cases provided by law: the latter phrase covered search warrants issued by a judge if there was a suspicion of receiving stolen property, for example, or permission to open correspondence if the authorities had reason to believe that written material was being sent into Tunisia to disturb public order. Article 10 provided for freedom of movement and there were in Tunisia thousands of tourists who could bear witness to that freedom; exceptions related, for example, to freedom of access to military premises, which was subject to authorization. In article 19, "the manner provided by law" meant what was specified in the electoral law - matters of detail, in particular, which had no place in the Constitution. In short, the restrictions on the freedoms provided for in the Constitution were no more extensive than those provided for in articles 18, 19, 21 and 22 of the Covenant, and the laws giving effect to them imposed no unreasonable limitation on the exercise of the rights and freedoms in question.

17. It had been asked whether there had been any "state of emergency" in Tunisia since the Constitution had been promulgated. To his knowledge, there had not been a single such case, unless one counted the events associated with the liberation of Bizerta, which might perhaps be likened to a state of emergency.

18. With regard to remedies, as provided for in article 2 of the Covenant, any person in Tunisia who considered that his rights had been infringed could take the matter to court. The organization of the courts, the way in which they functioned and as guarantees for defence were about the same as in France: for civil cases there were courts of first instance, courts of appeal and a court of cassation; in the case of administrative tribunals, however, there was no provision for appeal or cassation. Any accused person had the right to be assisted by a lawyer and, if necessary, was given free legal aid.

19. The acquisition of Tunisian nationality by aliens was governed by the Nationality Code. That code provided in particular, in article 13, that any foreign woman who married a Tunisian acquired Tunisian nationality at the time when the marriage was celebrated if, under the legislation of her country of origin, she lost her own nationality by reason of the marriage. Under article 14, a foreign woman who married a Tunisian and who, under that legislation, kept her nationality, could apply for Tunisian nationality if the couple had been resident in Tunisia for at least two years. Article 18 provided that a foreign minor who was adopted by a person of Tunisian nationality acquired that nationality when the adoption received judicial approval, provided that the minor concerned was unmarried.

20. Article 20 governed naturalization by decree: an alien who applied to be naturalized must have been resident in Tunisia for at least five years. However, that period was not required in the case of a person whose original nationality had been Tunisian, in the case of an alien married to a Tunisian woman when the couple was resident in Tunisia, or again in the case of an alien who had rendered exceptional services to Tunisia or whose naturalization was of special interest for the country.

21. Another series of questions related to equality of rights between men and women, divorce, grounds for divorce, the division of property after divorce and questions of inheritance. Divorce was permitted in Tunisia without it being necessary to cite specific grounds. When husband and wife were estranged, they could always seek a divorce; after an attempt at reconciliation, the matter was brought before the court which granted a divorce and determined whether it was the wife or the husband that was at fault. The party deemed to be at fault had to pay the other either an indemnity or a life annuity. Divorce did not, however, give rise to a division of property, as during marriage the property of husband and wife remained separate. Rights of inheritance were governed by the Koran: in principle, the man received double the share of the woman. That might appear unjust, but it had to be remembered first, that, before the Koran, the woman had had no right of inheritance and that the Koran therefore represented a step forward in that regard and, secondly, that the husband had greater obligations, as he was required to contribute to household expenses whereas such a contribution was optional, and in fact very often non-existent, for the wife.

22. It had been remarked that article 21 of the Tunisian Constitution was inconsistent with article 25 of the Covenant, which provided that the rights specified, in particular the right to vote and to be elected, should not be subject to "unreasonable restrictions". Obviously the word "unreasonable" might have a somewhat elastic meaning, but it did not appear to be applicable to article 21 of the Tunisian Constitution. Persons elected to the National Assembly had the present and future of Tunisia in their hands, and it was necessary to be certain of their patriotic sentiments. In Tunisia a naturalized foreigner could not vote or be elected for a period of five years; similar clauses were to be found in many countries, sometimes very democratic ones. Article 21 reflected a concern for caution, as patriotism was a matter of time - it might take one or more generations to acquire - and also a question of name. He had not personally been involved in drafting that provision, but he did not find it unreasonable.

23. Corporal punishment was in principle forbidden, since the person was inviolable, but it could happen that a policeman used violence against a thief, for example. There had been cases in which accused persons had complained to the courts of such ill-treatment; the courts had then had to ascertain whether there really had been such ill-treatment and, in cases where it had been established, the policemen concerned had been relieved of their duties or even sentenced to terms of imprisonment.

24. In the past, the granting of custody of children in the event of a divorce had depended upon the age, but the courts now took account primarily of the child's interests, deciding which of the parents was best fitted to take care of the child; financial questions were then settled accordingly.

25. With regard to property, a distinction was made between State property, the property of co-operatives, also subject to State control, and private property. There were also, chiefly in the south, lands owned collectively by villages or tribes, but the present trend was to hand them over to private owners, on the principle that individual work was more efficient. However, lands which were badly worked could be expropriated.

26. Foreigners were subject to Tunisian laws but, when agreements had been signed with other countries, as they had with certain European, Arab or black African countries, their provisions were applied in the event of a dispute.

27. In Tunisia freedom of expression was self-evident; to be convinced of that it was sufficient to listen to conversations in cafés, for example. However, political proceedings had been taken, chiefly against students carrying subversive tracts and seeking to stir up trouble on the pretext of ideological motives. Recently, students had damaged university property and ill-treated the director, although it should be mentioned that students in Tunisia were fed, housed and paid. There had also been a transport strike which had been accompanied by violence. In such cases it was essential to impose penalties, as otherwise the country would slide into anarchy. However, several amnesties had been granted and the number of persons remaining in prison could be counted on the fingers of one hand. Moreover, people of all shades of opinion could be found in the Destour party, but they all had the interests of the nation and not those of other countries at heart.

28. The death penalty existed in Tunisia but was seldom used, being applied to crimes such as parricide or particularly reprehensible acts; an appeal for clemency was then automatically submitted to the President of the Republic, even if the condemned person had not asked for it.

29. In Tunisia, besides the General Union of Tunisian Workers which combined several associations and had been created by the amalgamation of two unions, there was a Farmers' Union and a Union of Craftsmen and Industrial Workers. Participation in trade union activity was free and was not subject to any restriction. Strikes were permitted, provided that those who wished to work were not prevented from doing so; however, wildcat strikes, called without regard to the regular conciliation procedure, were illegal. Two or three sentences had been passed as a result of wildcat strikes, but there was no longer anyone in prison for that reason.

30. The National Assembly could adopt a motion of censure against the Government by a two-thirds majority. The Government had then to resign, unless the President of the Republic decided to dissolve the Assembly. In the event of a further censure motion after fresh elections, it was the President of the Republic who had to resign.

31. He added that on his return to Tunis he would have the text of the following instruments sent to the Committee: the Constitution, the Code of Personal Status, the Code of Civil Procedure, the Code of Penal Procedure, the Law on Administrative Tribunals, the Law on Freedom of the Press, the Law on Freedom of Association and the Nationality Code.

32. Mr. ESPERSEN thanked the representative of Tunisia for his detailed replies.

33. He doubted whether article 21 of the Constitution was consistent with article 2 of the Covenant, where it was said that each State Party "undertakes to respect and to ensure ... the rights recognized ... without distinction of any kind, such as ... birth ...". In particular, he would like to know whether a child born out of wedlock, the identity of whose father was uncertain, could be elected to the National Assembly.

34. In his statement the representative of Tunisia had said that students had been sentenced for carrying tracts and seeking to "stir up trouble", and had added that there were very few political prisoners. In that connexion, it would be interesting to know how a political prisoner was defined in Tunisia and what offences had been committed by the persons at present detained for political reasons.

35. Mr. BEN MASSOUAD (Tunisia), speaking at the invitation of the Chairman, said that, under the Nationality Code, Tunisian nationality was held by any child born of a Tunisian father, born of a Tunisian mother and a father who was unknown, stateless or of uncertain nationality, or born in Tunisia of a Tunisian mother and a foreign father. Those provisions took account of reality, in that it was most frequently the father who exercised parental authority and had most power over the children.

36. He would inform the Committee at a later stage exactly how many political prisoners there were; however, he could say at once that their number was infinitesimal. Such prisoners had been sentenced, not for their ideas, but because they had sought to depose the Head of State or had committed crimes of violence. A political offence was therefore associated with an offence under the ordinary law. Political detainees generally benefited from an amnesty after a few months or even weeks of detention.

37. Mr. SEMINEGA noted that Tunisian legislation was based on the Koran; that being the case, he wondered how it could be reconciled with the Covenant and the Protocol in regard, for example, to the freedoms of men and women.

38. Mr. BEN MASSOUAD (Tunisia), speaking at the invitation of the Chairman, pointed out that Tunisian legislation was based not only on the Koran, but also on modern law and, in particular, on French law relating to civil and penal procedure. The Koran could, moreover, be interpreted in the context of the period and in accordance with modern standards. For instance, previously there had been no limit to the number of wives, and they had been regarded as chattels; Islam had brought the number of wives down to four, on the express condition that all of them were accorded absolutely equal treatment, failing which a man could have only one wife. The Tunisian Code of Personal Status had gone further by prohibiting polygamy. Admittedly there were still problems - for example, in regard to inheritance where, as he had stated earlier, a wife had only half the entitlement of the husband - but they were being reviewed. To repeat, the law of today was no longer based only on the Koran but also on modern law.

39. The CHAIRMAN thanked the representative of Tunisia for his clear and detailed replies and took note of his intention to send the Committee a number of Tunisian legal texts in the near future.

The meeting rose at 12.55 p.m.