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SUMMARY RECORD OF THE 296th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 July 1981, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Jamaica (continued) (CCPR/C/1/Add.53)

1. Mr. MORDECAI (Jamaica), replying to questions raised by members, recalled that Mr. Tomuschat had inquired how the Jamaican Government intended to respond to the Committee's consideration of its report. In that respect the Committee could rest assured that the comments made by members would be brought to the attention of the appropriate authorities and that the most serious consideration would be given to all views expressed. His Government would provide written replies on some questions and additional information where necessary; it regarded the present deliberations as just the start of a dialogue that would be continued in the future.
2. Replying to specific questions raised by Mr. Lallah, he said that his Government was fully aware of its obligations to protect civil and political rights and to create and encourage the equality of all persons by means of affirmative action. Further information on that point would be communicated to the Committee later, as well as on the protection of women's rights, in respect of which much was being done. A government unit with specific responsibility for women's rights had been established, and there were many women in the Jamaican diplomatic service, including several of ambassadorial rank.
3. Discriminatory legislation was prohibited under section 24 (1) and (2) of the Constitution. The protection afforded by the Constitution in relation to ordinary legislation was entrenched in section 49 and strengthened by section 2, whose provisions, taken together, gave supreme force to the Constitution without actually saying so and therefore provided the citizen with greater protection. In some countries the protection afforded by ordinary legislation on one day could be rescinded the next day. In countries like Jamaica, however, where such protection was enshrined in the Constitution, that situation could not arise.
4. Replying to questions raised by Mr. Hanga, he said that his Government would include information on any difficulties encountered in implementing the Covenant when it submitted written replies.
5. The fundamental rights and freedoms of the individual were guaranteed in chapter III of the Constitution. Any limitations were designed to ensure that the enjoyment of those rights and freedoms did not prejudice the enjoyment of them by others or the public interest. When a person appeared before tribunals and administrative authorities he was fully entitled to the protection of the Constitution and laws of Jamaica. Any alleged infringement of his fundamental rights and freedoms could, under section 25 of the Constitution, be brought before the Supreme Court for redress, without prejudice to any other action lawfully available. Section 25 (2) was, in fact, couched in the broadest terms and therefore afforded very extensive remedies. The country's independent Judiciary would fully utilize its constitutional authority in that respect.
6. A distinction should be made with regard to the burden of proof under section 15 of the Constitution. A person applying to the Supreme Court for redress regarding an alleged infringement of his right to personal liberty under section 15 would merely have to establish that he had in fact been deprived of his liberty, as was the case

with most legal systems in the world. The burden of proof did not involve adducing negative evidence to exclude the operation of the exceptions. Once the complainant had established his deprivation of liberty, it would then be for the authority concerned to establish, on the evidence, that it was entitled to claim the operation of an exception.

7. Non-professional judges were not elected in Jamaica. All matters relating to the enforcement of the fundamental rights and freedoms affirmed in chapter III of the Constitution were heard by the Supreme Court or, on appeal, by the Court of Appeal or the Judicial Committee of the Privy Council. All those courts were staffed by professional judges whose independence was constitutionally secured. Nevertheless, in certain circumstances administrative tribunals had had to be set up to hear specific issues; they were staffed by persons who were not members of the Judiciary but had particular skills in the area of their competence.

8. For instance, the Labour Relations and Industrial Disputes Act, which established the Industrial Disputes Tribunal, stated that the Tribunal should consist of a Chairman and two Deputy Chairmen appointed by the Minister, with sufficient knowledge of, or experience in, labour relations, and of not less than two members appointed by the Minister from a panel supplied by organizations representing employers and an equal number of members appointed by him from a panel supplied by organizations representing workers.

9. In Jamaica the press was free, effective and not controlled by the Government. Relations were based on mutual respect and the common desire to see Jamaica advance as a free and progressive society. In fact, the history, traditions and practices of the country both ensured and required a free press. Constitutionality was determined by the Supreme Court, which was regarded as the watch-dog of the Constitution.

10. With regard to the electoral system, the Constitution contained certain provisions on matters such as voting. It had been amended twice, once to lower the voting age to 18 and then to remove certain disabilities affecting senators. There had recently been established an impartial electoral commission on which both major parties were equally represented. The national election of 1980 and the local elections of 1981 had both been administered by the commission and had served to inspire confidence in it both in Jamaica and elsewhere. Further information on that point would be supplied later.

11. Replying to Mr. Bouziri's point concerning a full list of exceptions under section 24, he apologized for a certain confusion in the report. Four examples of exceptions were listed at the bottom of page 4, but other exceptions not listed were in fact contemplated by the Constitution. For example, section 24 (4) (b) concerning adoption, marriage, and divorce was also excluded, although it was not listed on page 4. The authors of the report had not meant to give the impression that the list was not exhaustive, and he was confident that checking references against the Constitution would provide a definite list of exceptions.

12. All Governments of Jamaica had recognized independence of the Judiciary as being one of the fundamental requirements of the constitutional system, and in particular of the Constitution's ability to guarantee rights and freedoms to all individuals. The independence of judges was ensured in chapter VI, section 49, of the Constitution, and its main characteristics were security of tenure, security of remuneration and protection against removal from office. With regard to the latter, section 100

(concerning the Supreme Court) and section 106 (concerning the Court of Appeal) laid down elaborate procedures for the protection of judges against removal from office. There were only two grounds for removal: "inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause)" or "misbehaviour". As a first condition, the Governor-General was required to appoint a tribunal of persons who currently held or had held high judicial office to inquire into the question whether the matter should be referred to the Judicial Committee of Her Majesty's Privy Council. The Judicial Committee must then advise that the judge should be removed from office.

13. Mr. Movchan had asked whether the rules of customary international law referred to on pages 2 and 22 of the report were applicable as generally applicable rules of customary international law or as rules recognized locally by the Jamaican courts as customary international law. In his view, common law legal systems did not make a sharp distinction between those two points. He presumed that a Jamaican court would apply the generally applicable criteria to determine whether a rule was a generally recognized provision of international law, and the Jamaican courts would then recognize that rule under Jamaican jurisprudence. Concerning Mr. Movchan's request for examples of cases relating to section 25 of the Constitution, there had been many instances of persons claiming that their rights had been infringed under that section. He believed that such examples could with advantage be given in the written material to be submitted to the Committee by the Jamaican Government.

14. Turning to the concern expressed about the power of the Governor-General, he stated that according to section 32 of the Constitution, the Governor-General was required to act in accordance with the advice of the Cabinet, except in certain specifically defined areas. Her Majesty the Queen, represented in the person of the Governor-General, was the titular Head of State, the Prime Minister the effective Head of Government, and the Cabinet the effective source of executive authority in Jamaica. He was confident, therefore, that the Constitution clearly showed where effective power lay.

15. He wished to assure Mr. Sadi that protection of fundamental rights and freedoms was an effective part of the training of police and security forces.

16. Mr. Ortega had asked a question regarding the Governor-General's prerogative of mercy. Under section 90 of the Constitution, the Governor-General was given the discretion to grant the prerogative of mercy, and he wished to assure Mr. Ortega that that prerogative did indeed cover the crime of murder. Upon a conviction for murder, a report was sent by the judge to the Jamaican Privy Council, which considered the report and advised the Governor-General whether the prerogative of mercy should be granted. There had been instances of that discretion being used in murder cases. The matter of capital punishment was currently being debated in Jamaica by a bipartisan parliamentary committee, which had asked for more time to make recommendations to Parliament.

17. With regard to the expulsion of a Jamaican citizen under section 15 (j), after consultation with senior officials of his Government he had reached the conclusion that a citizen could not be expelled. Subsections (1) and (3) (b) of section 16 concerning protection of freedom of movement made the expulsion of a Jamaican citizen unconstitutional.

18. Mr. Tarnopolsky had raised questions concerning judicial review. He believed Jamaica was in a distinct situation since it was a former colony of the United Kingdom but, unlike the United Kingdom, had a written Constitution. The power of judicial review was embodied in widely recognized principles of constitutional law as contained in the Jamaican Constitution. He referred again in that connection to section 2 establishing the supremacy of the Constitution. Section 25 contained a clear and express reference to the power of judicial review with respect to chapter III. No lack of clarity had been detected by the Jamaican courts, and there had been other cases brought under clauses similar to section 25 in West Indian jurisprudence. With respect to the power of the Supreme Court to hold a law unconstitutional, that Court had on many occasions considered the constitutionality of legislation. The most important decision in that regard had concerned the Gun Court Act; after the case had progressed through the Court of Appeal, the Judicial Committee of the Privy Council had declared certain provisions of that Act to be unconstitutional.

19. Mr. Tarnopolsky had also raised an interesting point, based on the theory of proportionality, with respect to section 14 (2)(d) of the Constitution. The very fact of proportionality was one of the major factors to be considered by the courts under the ambit of the phrase "reasonably justifiable". Thus in the situation referred to by Mr. Tarnopolsky, it would be quite open to the courts to find that killing to protect oneself from serious harm was not an infringement of the right to life, whereas killing to resist a minor theft was such an infringement. The phrase of the Constitution was open to the interpretation of the courts, which would consider the doctrine of proportionality in their assessment of the position of law.

20. In reply to Sir Vincent Evans' question concerning the human rights council, he stated that that matter would also be taken up in the written information to be submitted to the Committee. Sir Vincent had paid particular attention to the provisions of section 24; he wished to assure Sir Vincent that those remarks would be brought to the attention of the proper authorities in Jamaica. In interpreting the Constitution, the Government of Jamaica would always have the closest regard to the protection of the rights and freedoms of all persons and to its international obligations. He wished to assure Sir Vincent that the Gun Court Act had been tested by the Supreme Court and the Privy Council and in its present form ensured due process of law. According to practise under the Act, the accused was entitled to legal aid.

21. Mr. Tomuschat had asked a question concerning the scope of the words "all persons" in the Jamaican Constitution. He wished to assure him that, in cases where no distinction was made, that phrase would have a literal meaning under the Jamaican Constitution.

22. In conclusion, he thanked the Committee and expressed the view that the presentation of the report would be the start of a continuing dialogue. The Committee would be receiving written answers to the points he had not adequately covered.

23. The CHAIRMAN thanked the representative of the Government of Jamaica for his response, which was all the more commendable in view of the fact that he was alone. He (the Chairman) noted that the Committee could expect further replies in writing and expressed appreciation to the Jamaican Government for its excellent report.

Mr. Mordecai withdrew.

ANNUAL REPORT OF THE HUMAN RIGHTS COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL (agenda item 6)

Agreed interim statement on the duties of the Human Rights Committee under article 40 of the Covenant (CCPR/C/XIII/CRP.1/Add.14)

24. Mr. ERMACORA said that it was clear from article 40, paragraph 1 (b), of the Covenant that the Committee was competent to decide when reports should be submitted. In addition, the need to continue the dialogue with States parties had been clearly stated in annex IV, subparagraph (f), of the Committee's draft annual report (CCPR/C/XIII/CRP.1/Add.14), so no difficulty arose there. Of the draft decisions that had been submitted concerning the periodicity of reports, he had a slight preference for Mr. Tomuschat's because of its more systematic presentation of the situation. However, he was not in favour of deleting the words "more than once" from the third paragraph of that proposal since they provided useful factual information. He agreed with Mr. Movchan that the words "periodic report", which appeared in document CCPR/C/XIII/CRP.1/Add.14, annex IV, subparagraph (f), were not altogether suitable since the term was already used in another context in the United Nations system. The term "subsequent report", which was also used in annex IV, was preferable.

25. There were two further questions which he wished to raise. The first had occurred to him in connection with the information furnished by Senegal. Although under the Covenant there was an obligation on States parties to submit reports to the Committee, they might also be prepared, as sovereign States, to contribute to the work of the Committee by means other than the obligatory report. He believed an appropriate reference to that type of contribution, i.e. information outside the framework of article 40 of the Covenant, could well be incorporated in annex IV. He also suggested the insertion after the words "be requested" in document CCPR/C/XIII/CRP.3, paragraph 1, of the words "notwithstanding the possibility of bringing information to the notice of the Committee at any time about developments within the framework of the Covenant". Such information would constitute not a subsequent report but a continuation of the dialogue and should not therefore be excluded by the present wording of the draft decision.

26. Secondly, he believed that the periodicity of reports should perhaps be considered in relation to the ability of the Committee to give consideration to them. The point to be decided was whether with a five-year periodicity the Committee would be physically able to consider and discuss all the reports submitted. He had in mind, for example, the very extensive report from Iran, which had not yet been submitted and would no doubt take up a great deal of the Committee's time.

27. Sir Vincent EVANS said that the number of draft proposals before the Committee made it difficult to make orderly and systematic comments, especially since only half the members of the Committee were present. He agreed with Mr. Movchan that any decision should be based on article 40 of the Covenant. Neither the procedure so far adopted by the Committee for examining reports, nor the present proposals, nor the October 1980 consensus had in any way contravened or gone beyond the provisions of article 40.

28. Although the present proposals constituted an attempt to develop further the consensus arrived at in October 1980, they did in fact depart from the relevant paragraphs of the consensus in two very important respects. In the first place, the periodicity, i.e. the basic period between reports, had been extended from four to five years, a proposal which he warmly welcomed. He had always regarded an interval of four years as unrealistic and indeed it might be necessary later to extend the period to six or seven years in view of the time available to the Committee, the

time required for consideration of reports by States parties and the number of reports liable to be submitted in the future, especially if the present number of 67 States parties were to increase to 100 or even more.

29. The second main departure from the October 1980 consensus related to the way in which account was to be taken of States parties which had appeared before the Committee more than once. One State had in fact appeared before the Committee no less than three times, although that was an exceptional case, and eight States had appeared twice - once for consideration of the initial report and a second time for consideration of supplementary information provided in response to comments and questions by the Committee. Mr. Movchan had suggested that the fact that some States might have appeared before the Committee twice was of no relevance, representing as it were a gratuitous contribution by the States concerned. He disagreed categorically with that suggestion. The view of at least the majority of the Committee had been that reporting States should not only respond initially by means of immediate verbal replies and discussions, but should be invited to supplement the information given orally by means of subsequent written replies. It would be very unfair and very unreasonable for those States which had co-operated by furnishing such supplementary written information and then appearing before the Committee to be put at a disadvantage vis-à-vis other States which had not, and the Committee should be very circumspect about accepting any such proposal.

30. The proposal for a rather rigid five-year period had a certain academic appeal, but it must be examined against the background of the method of work of government departments and of the officials manning such departments. The envisaged procedure provided, quite rightly, for an examination of initial reports by States parties, followed by a succession of further reports, so as to enable the Committee to follow up in an orderly and progressive manner the evolution of the human rights situation in all States parties to the Covenant. In his view, however, the greatest impact on the human rights situation would be achieved by the Committee's consideration of the initial report, so the immediate follow-up of that report was all-important. States parties should be encouraged to respond to the initial consideration of their reports by submitting comments and replies without delay, a procedure which was obviously not regarded by States parties as inconsistent with the Covenant, as had been made amply clear at the present meeting by the representative of the Government of Jamaica. States parties that were prepared to co-operate in that way would, however, expect early note to be taken of the information provided by them in response to the Committee's comments and questions, and would not appreciate continuation of the dialogue being deferred for two or three years, during which time they would certainly tend to lose interest.

31. A further disadvantage of the rigid five-year period which had been proposed was that States parties would know that, after submission of the initial report, no further information would be required for a period of five years and the file would, in accordance with normal office practice, be conveniently put aside. At the end of that period, officials would most probably have changed posts and, even if the file with the Committee's questions was still available, those questions would no longer have the same relevance and certainly not the same impact.

32. He was convinced that that course of action would cause the Committee to lose much of what it had so far gained. Under the proposed system, the second round of discussion with a State party could be discontinued for two years. If the second round of proceedings were to be suspended until the second report was submitted, there would be disillusion among all those interested in human rights. The Committee, which had started so well, would be losing its impetus and become just another Committee operating in a routine and uninteresting manner. He was convinced that the Committee

had done good work so far and that its procedures had been developing in the right direction. He therefore urged the Committee to build on those procedures without losing anything of what had so far been achieved.

33. The proposed five-year reporting could have great merit provided the Committee did not lose the impetus of the second round as so far practised. It was essential to ensure an early follow-up after the initial examination. He urged that that point should be taken into careful consideration if the Committee was going to adopt the kind of decision proposed.

34. Of the two proposals under consideration, he preferred on the whole Mr. Tomuschat's. The preamble should begin with a reference to article 40 of the Covenant. It should then refer to the consensus reached in October 1980. For the rest, he disapproved of the method of legislating by reference among other reasons because it made the decision difficult to read and to understand; the reference to paragraph (g) of the October 1980 consensus should, in his view, be replaced by the reproduction of the actual contents of that paragraph.

35. As far as operative paragraphs (1) and (2) were concerned, he stressed the need to make special provision for each of the different categories of States concerned. One had to consider two broad categories: first, States which had submitted reports, and secondly, States which had not yet presented reports to the Committee. The first category was itself divided into two subcategories: first, that of States which had appeared more than once before the Committee - a category which should be recognized both in the preamble and in the operative part of the text; and secondly, States which had submitted reports but whose reports had not yet been considered by the Committee.

36. He urged the Committee not to take any decision which would have the effect of encouraging some States to report late. Both texts under discussion would make the period of five years run from the date of reporting, which could be much later than the date set under article 40 of the Covenant. He therefore urged that the five-year period should run from the Date on which the report was due under article 40.

37. A further operative paragraph should state that thereafter, i.e. after the submission of the second report, a State party was expected to submit reports every five years.

38. A separate paragraph to cover special cases should follow. The absence of such a provision from the two texts under consideration made them unduly rigid. One obvious example was a State that experienced a change of régime which resulted in changes in the human rights situation. In such cases it should be open to the Committee to reserve expressly its right to call for a supplementary report.

39. Lastly, he supported the suggestion for a paragraph dealing with States which provide additional information, on the lines of Mr. Tomuschat's paragraph (3). The procedures should be kept sufficiently flexible to ensure that when a State furnished additional information the Committee could continue promptly its dialogue with that State. He felt strongly that the Committee should adopt the right procedures to make its work more effective.

40. Mr. TARNOPOLSKY recalled that the present discussion was aimed at trying to achieve consensus on a text; for that purpose, discussions on drafting points were not helpful. The proposal for a five-year periodicity of reports was based on the realization that the four-year periodicity originally envisaged was unduly frequent and hence not practicable.
41. Leaving aside minor questions of drafting, he believed that the preamble should commence with a brief paragraph referring to the October 1980 decision and contain a paragraph explaining that a four-year period had been found to be too short and another acknowledging that the five-year period should run from the last discussion and not from the date on which the report was due.
42. Turning to the operative paragraphs, he stressed that, as he recalled it, the members had agreed on the principle of a five-year periodicity.
43. On the question of special cases, he felt that the case of Iran provided a good example. The representative of that State had indicated that the former report by Iran, submitted under the previous régime, was not valid. As he saw it, the situation was simply that Iran should be treated as a country which had not submitted its report under article 40. That situation was thus covered by the proposed texts.
44. Another question with which the Committee would have to deal was that of States which submitted very brief reports. The Committee would have to take the hard decision of informing those States that their reports were totally inadequate.
45. In conclusion, he urged the Committee to abide by the consensus previously reached and expressed his willingness to accept any drafting improvements which might be suggested.
46. Mr. GRAEFRAETH said that in preparing the draft decision contained in document CCPR/C/XLIII/CRP.3 the Working Group had relied on the October 1980 consensus; the original proposal had been for a four-year periodicity but he could accept a period of five years, which had been introduced to meet the wishes of a few members. The reporting period had been originally made to start on the date when the initial report had been examined but, after serious consideration, the Working Group proposed in paragraph 1 of its text to make it begin on the date when the report was due under the provisions of article 40 of the Covenant in order to take into account the fact that certain States were late in reporting, sometimes over two years late.
47. He drew attention to paragraph 111 of the Committee's report for 1977 (A/32/44), which recorded the agreement that "the procedure to be followed by the Committee would be to invite the representative of the State party to make an oral introduction of the reports, followed by questions from members of the Committee. The representative of the State party would be given an opportunity to answer these questions orally or to refer to his Government for additional information".
48. He stressed that the Working Group had endeavoured to do justice to States which had appeared more than once before the Committee. In some cases, a State party offered to submit a second report but the Committee itself had never asked a

State for a second report. As far as the Committee's procedures were concerned, some method should be devised to avoid the difficulties resulting from the timing of the submission of reports by States. To that end, the reporting period should be taken as starting, in the case of the initial report, from the date on which it had been submitted. It was necessary to take into account the various situations of: first, States which had not appeared before the Committee; secondly, States whose reports had not yet been considered by the Committee; and thirdly, States which had not submitted any reports. Lastly, he urged that measures should be taken to avoid giving a State an opportunity to gain five years simply by submitting a two-page report.

49. The CHAIRMAN, observing that the exchange of views had clarified the issue, said that further discussion thereon would be deferred until a forthcoming meeting.

STATEMENT BY MR. BOUZIRI ON THE SUBJECT OF PRESS RELEASES

50. Mr. BOUZIRI requested that the attention of the United Nations Information Service should be drawn to the need for the more careful preparation of press releases. Thus, in press release HR/1065 of 15 July 1981 containing a summary of the Committee's discussion on that day at its 294th meeting there were two mistakes concerning his own statement. First, he had quoted a Tunisian proverb saying that it was useless to try to hide the sun behind a sieve, but the press release had used the word "Blanket". Secondly, he was misreported as saying: "Either divorce was permitted or it was not". It was better not to report a statement than to present it in that very inaccurate manner.

The meeting rose at 6 p.m.