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Third Session

SUMMARY RECORD OF THE 53rd MEETING

held at the Palais des Nations, Geneva,  
on Thursday, 19 January 1978, at 10.45 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 4)  
(continued)

Report of Sweden (CCPR/C/1/Add.9 and Corr.1) (continued)

1. At the invitation of the Chairman, Mr. Larsson (Sweden) took a place at the Committee table.
2. Mr. LARSSON (Sweden) said that, before replying to the questions he had been asked at the preceding meeting, he wished to stress that no uniform world-wide solutions could be found to all the problems which States had to deal with in their reports under article 40 of the Covenant. Thus, in order to incorporate the provisions of the Covenant into its domestic law, Sweden had adopted a special system which was, however, consistent with article 2 of the Covenant, as Mr. Espersen had already explained. On the question whether Sweden would take account, in its domestic law, of any change in the interpretation and implementation of the Covenant, he said that his country had accepted the procedure for inter-State communications, provided for in article 41 of the Covenant, and the system of communications from individuals, provided for in the Optional Protocol. It also accepted the supervision exercised by the Human Rights Committee. It was true that the decisions taken in accordance with those procedures were only morally - and not legally - binding. The Swedish Government had itself expressed regret about that situation in the bill by which it had submitted the text of the Covenant to Parliament. Procedures similar to those of the European Convention on Human Rights would undoubtedly have been preferable.
3. As for the reasons why Sweden had entered reservations to three provisions of the Covenant, he again wished to refer the members of the Committee to the explanations given by Mr. Espersen.
4. Concern had been expressed by many members of the Committee regarding the Act concerning anti-social behaviour which was prejudicial to the community (1964: 450). The implementation of that Act was subject to a court decision, which could be taken only if it was apparent that the person concerned could not be helped in any other way to adopt a normal way of life. Moreover, there was a safeguard against abuse of the possibility of committing an individual to an occupational institution, since an appeal against a decision to that effect could be lodged with a higher court.
5. The question of religious instruction in schools had also attracted considerable attention among the members of the Committee, who seemed, basically, to be concerned that the right to be an atheist might not be respected. It was, however, quite clear from the report that religious instruction was given in an objective and neutral manner, which should not be contrary to personal beliefs. With regard to the two exceptions which had been mentioned, pupils must, in every case, be given religious instruction outside school hours equivalent to the compulsory instruction given in secondary schools. As for the concept of "public indignation", which one member of the Committee had noted in the Freedom of Religion Act, there was no case in which the clause embodying that concept had been implemented. It was not difficult, however, to imagine the cases in which it might be applicable.

6. It was true that the system of bail did not exist in Sweden, as several members of the Committee had observed, but there were alternative procedures. When there were reasonable grounds for supposing that a suspect had committed an offence punishable by imprisonment and that he might try to escape prosecution or punishment, an injunction could be issued prohibiting him from leaving his place of residence. Such an injunction could be accompanied by an order requiring him to make himself available to the authorities at a certain place, such as his home or place of work, at specific times, or to report periodically to the police. Another alternative was the seizure of property belonging to him to the approximate value of any damages a court might subsequently require him to pay.

7. Referring to the part of the report relating to article 17 of the Covenant, a member of the Committee had expressed reservations about the concept of "means of coercion". The heading of the relevant chapter was, in fact, "Seizure". With regard to the circumstances in which a search of premises might be ordered, the basic requirement was that there should be reasonable grounds for believing that an offence punishable by imprisonment had been committed. More stringent rules applied to searches of premises other than the offender's place of residence.

8. With regard to the registration of political opinions, which had been mentioned by several members of the Committee, he wished at the outset to make it clear that, where the possibility of registration might exist in exceptional cases, the records were not available to the public. Furthermore, there was an elaborate system of supervision and no one would have his political opinions recorded solely on the grounds that he had committed a crime. With regard to the registration of organizations on account of their political opinions, he drew attention to the antepenultimate paragraph of the section of the report relating to article 17 of the Covenant.

9. In connexion with article 9 of the Covenant, a member of the Committee had asked how long a person awaiting trial could be detained in custody in Sweden. Obviously, everything depended on the duration of the investigation but, in any event, the court must ensure, at least every two weeks, that the investigation was being carried out as expeditiously as possible. If the court found that there were no longer any legal grounds for keeping the suspect in custody, his release must be ordered.

10. Several members of the Committee had dwelt at length on the question of equality of the sexes. Although that was a question of current interest in Sweden, there were no legislative provisions relating to it, apart from certain instructions relating to government departments, which implemented a number of constitutional provisions. A government commission was, however, drafting a bill on the question.

11. Some members of the Committee had expressed concern about the situation of aliens in Sweden. In view of the scope of that question, it was not possible to mention all the provisions governing the issue of work permits, the granting of citizenship and the general conditions in which aliens lived. On that question, he could only refer the Committee to what the Swedish Government had stated, on page 32 of the report, concerning article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. Other bodies in the United Nations system therefore already had information on the question.

12. Referring to a question asked concerning discrimination by individuals, he stated that the Penal Code provided for the punishment of unlawful discrimination and that provision would be applicable in the cases mentioned.

13. One member of the Committee had drawn attention to the serious problems which might arise following the expulsion of an alien. He wished to emphasize that the Government, as the supreme authority for the execution of an expulsion order, gave due consideration to the points mentioned by that member.

14. If the members of the Committee desired further information on the situation of an alien who married a Swedish citizen, as requested by one member, they could put specific questions to the Swedish Government. Generally speaking, a marriage duly entered into with a Swedish citizen would of course be taken into consideration for the purposes of the issue of a work permit or the granting of Swedish citizenship. However, economic and social rights such as participation in the social welfare scheme were independent of marriage and derived from permanent residence in the country.

15. In reply to another question asked at the preceding meeting, he stated that no distinction was made between native-born and naturalized Swedish citizens.

16. As to the distinction between expulsion and deportation, it should be noted that an expulsion order was issued in connexion with the imposition of a sentence of imprisonment of more than one year. The deportation of an alien could be ordered for various reasons mentioned in the Aliens Act, such as failure to lead an honest life, misuse of drugs or failure to meet obligations to the community or private individuals. Some members of the Committee had noted that the Government could, in one exceptional case, expel or deport aliens directly. That possibility had been introduced into Swedish law as a result of the alarming increase in the number of international crimes involving violence; the Government had only rarely had recourse to that possibility, which was in fact the subject of much discussion in Sweden. In any event, the alien in question was entitled to counsel at public expense.

17. Several members of the Committee had referred to the question of the openness of court proceedings. That question was strictly regulated in the Code of Judicial Procedure (chapter 5): when national security was involved, proceedings could be held in camera, but the verdict was generally made public even when the court proceedings had been held in camera.

18. On the question who could reject a counsel, he said that the court could, for example, reject a counsel on the grounds of misconduct. An appeal could, of course, be lodged against such a decision.

19. Referring to article 12 of the Covenant, he said that it was for the Swedish authority responsible for issuing passports to decide whether any of the grounds for refusal to issue a passport were applicable in a particular case. In that case, too, the decision could of course be appealed.

20. On the question of film censorship, several members of the Committee had asked what was meant by a film that was "conducive to coarseness" or "dangerously inflammatory". Those concepts were obviously interpreted in the light of the moral values prevailing at the time when the decisions were taken; moreover, an appeal against those decisions could be lodged with the Government.

21. Several members of the Committee had asked about the meaning of the expression "economic well-being of the people", in chapter II, section 13, of the Swedish Constitution. In Swedish, that expression clearly indicated that the provision in question related to grounds for discrimination which were applicable only in the event of a serious crisis; it would certainly not be used in order to censor economists, for example. That criterion would, in fact, be applied in only one of the situations referred to in article 5 of the Covenant.

22. With regard to the safeguard against telephone tapping, he emphasized that the use of coercive measures required a court decision. Moreover, the interpretation of the law was subject to parliamentary supervision, as indicated in the report.

23. The concept of the "security of the Realm", which could constitute grounds for discrimination, appeared to correspond to the concept of "national security", as used in articles 19, 21 and 22 of the Covenant.

24. Referring to chapter 2, section 12, of the Swedish Constitution, which was reproduced in paragraph 3 of the report, a member of the Committee had asked what was meant by a "democratic society". On that point, he could only reply that that concept must be interpreted in the light of the Swedish Constitution.

25. The expression "another procedure of international investigation", contained in the reservation entered by the Swedish Government to the Optional Protocol, related to cases brought before the European Court, the European Commission on Human Rights and the International Court of Justice.

26. One member of the Committee had expressed doubts concerning the freedom of Swedish radio and television in view of the State broadcasting monopoly. However, the report made it clear that no advance censorship was exercised over broadcasts. The provisions of the 1949 Freedom of the Press Act, chapter 1, section 1, which were reproduced in the part of the report relating to article 19 of the Covenant, applied to radio and television broadcasts. Moreover, there was nothing to prevent the granting of the same facilities to aliens, although, for the moment, there was no constitutional guarantee in that respect.

27. One member of the Committee had thought that the possibility that the public prosecutor could bring a civil action in connexion with criminal proceedings existed only in theory; in practice, that procedure was very common. A private individual in Sweden could initiate criminal proceedings on his own. The courts and administrative authorities already had the right to examine the constitutionality of laws and regulations, although they hardly ever exercised it at present.

28. Chapter 2 of the Constitution had the same status as the other chapters: it could be repealed or amended only after two decisions by Parliament, as elected in successive general elections. No provisions was made for the suspension of the Constitution in a public emergency. In such a situation, no law contrary, for example, to chapter 2 of the Constitution could be enacted.

29. Lastly, he confirmed that the Ombudsman submitted an annual report to Parliament. He would be glad to make a copy of the Ombudsman's most recent report available to any members of the Committee who wished to read it, although the text was, of course, in Swedish.

30. Mr. OPSAHL said that, although he had been unable to attend the previous meeting, he wished to express to the Swedish representative his appreciation of the efforts made by the Swedish Government to promote the rights recognized in the Covenant. Many countries should take Sweden as an example in that respect.

31. Like the other reports submitted to the Committee, the report under consideration described mainly constitutional and legislative provisions. Under article 40 of the Covenant, States Parties undertook to submit reports not only on the measures they had adopted, but also on the progress made in the enjoyment of certain rights. Obviously, the measures adopted by a Government were one thing, and any progress that might result from them for individuals was another. It was therefore necessary to ascertain the extent to which the nationals of a particular country and aliens could effectively enjoy the rights which were legally accorded to them. On that point, most of the reports were manifestly incomplete. Thus, in connexion with articles 2 and 14 of the Covenant, the Swedish Government gave copious information on the measures which had been adopted but gave little indication of the actual situation of Swedes and aliens, for example, with regard to legal assistance.

32. Mr. TOMUSCHAT, referring to the Swedish representative's remarks on the concept of anti-social behaviour, pointed out it was not sufficient to place a lawyer at the accused's disposal: it was also necessary to have an adequate set of basic rules. It might perhaps be useful to have some details on the matter in writing, indicating in particular what situation, were covered by the concept of anti-social behaviour, and on the basis of what evidence a court might decide that a person's behaviour was not in keeping with his obligations to society.

33. He also wished to know whether the Swedish Parliament had passed a law setting limits for the exercise of freedom of expression where the well-being of society was endangered.

34. Mr. TARNOPOLSKY felt that answers given orally by the various representatives of States, such as the Swedish representative, should not be considered as necessarily final. Governments which had not replied, or had not replied fully, must be allowed the time to collect the information requested of them. It was obvious that an immediate answer could not be expected to some of the questions asked.

35. The CHAIRMAN pointed out that the opening exchange of questions and answers was only the first stage in the consideration of reports and its purpose was to elicit clarification and supplementary information. He expressed his satisfaction that the representative of Sweden has suggested that members of the Committee might address questions directly to his Government.

36. Sir Vincent EVANS said he was grateful to the representative of Sweden for his attempt to give an immediate answer, so far as possible, to the questions put to him. The summary records of the discussion would enable the competent Swedish departments to see whether further information was required. It was certainly gratifying that members of the Committee had been invited to put questions to the Swedish Government, but at the same time it would be helpful if the Swedish authorities expanded some of the representative of Sweden's replies.

37. It would be desirable, in order to maintain the dialogue between the Committee and Sweden, for a Swedish representative to be present during the discussion when consideration of the report was resumed in the light of any further information which might be received.

38. Mr. MOVCHAN thanked the representative of Sweden for his answers and his efforts to clarify the content of the report submitted by the Swedish Government (CCPR/C/1/Add.9 and Corr.1) in fulfilment of the obligations deriving from the Covenant and in accordance with the guidelines prepared by the Committee.

39. The summary records of the Committee's meetings and its annual report, which were documents of general distribution and would therefore be made available to the Swedish Government, offered an adequate basis for that Government itself to decide whether it should transmit further information in writing or exercise its right, as provided in the provisional rules of procedure, to be represented at the meetings at which the Committee would revert to its report. For its part, the Committee could certainly, under the provisional rules of procedure, request additional information from a Government if it deemed it necessary, but such a step should be reserved to a later stage, and for the moment, the Committee should await the Swedish Government's observations on the summary records and on the section of the Committee's report devoted to its own report.

40. Mr. GANJI thanked the Swedish Government for the clear and comprehensive report it had submitted.

41. The answers the Swedish representative had given were perhaps incomplete, but the Committee could not, in all fairness, pursue the discussion which had been begun, once it felt that it would be sufficient to await a written answer. The Committee should ensure, in cases of that kind, that the State concerned was able to make whatever corrections it thought necessary to its statements, as reproduced in the summary records, and was allowed reasonable time for that purpose. The sovereignty of States and their right to equal treatment must be respected.

42. Mr. GRAEFERATH said he shared Mr. Ganji's views and hoped that the Committee would not depart from the normal procedure.

43. Mr. LARSSON (Sweden) said that his Government would supplement the answers he had given as soon as possible, but pointed out that the Swedish authorities might consider the answer to a question sufficiently full while the Committee thought the opposite.

44. He wished to add two further clarifications: first, no law had been passed under which the economic well-being of the people could be invoked to justify discrimination; second, in criminal matters, all defendants were able to benefit from legal aid under satisfactory conditions and no distinction was made between Swedish citizens and aliens.

45. Mr. Larsson (Sweden) withdrew.

46. The CHAIRMAN pointed out that reports did not have to be introduced at meetings of the Committee and when they were, the representatives of the States parties concerned could where necessary choose to provide additional information or not to do so, and could reply or not reply to questions which they were asked.

Report of Mauritius

47. The CHAIRMAN announced that, in accordance with the guidelines adopted by the Committee, the Permanent Mission of Mauritius to the United Nations in New York had transmitted a new report 1/ to replace the previous one (CCPR/C/1/Add.2).

48. At the Chairman's invitation, Mr. Venchard (Mauritius) took a seat at the Committee table.

49. Mr. VENCHARD (Mauritius) said that the Government of Mauritius wished to co-operate wholeheartedly with the Committee and to furnish all the information it desired.

50. Since the new report by Mauritius had not yet been distributed, he read it out and then added some further details.

51. Regarding equality of men and women in the exercise of civil and political rights (article 3 of the Covenant), jury service was an obligation, not a right, under the Mauritius Code of Criminal Procedure. A woman could not at present serve, because of the virtual "sequestration" to which the members of the jury were subjected throughout the trial and which was incompatible with the fulfilment of a woman's obligations to her children; however, an amendment to the Code giving women the opportunity of performing jury service if they so wished had been proposed.

52. Mauritius was not a party to the Convention on the Prevention and Punishment of the Crime of Genocide but applied the principle of jus cogens to that crime.

53. The new report did not give any information referring expressly to article 27 of the Covenant, but the rights set forth in that article were implicitly recognized in section 11 of the Constitution, which provided for the teaching of religion in schools, for the organization of cultural activities and of youth clubs subsidized by the State, and for radio and television broadcasts in the languages of all national minorities.

54. Lastly, he gave some details of the measures taken under the state of emergency proclaimed in 1971. The Mauritius Constitution provided for a state of emergency, but the derogations permitted under it were restricted to sections 5 and 7 of the Constitution, dealing with the formalities concerning arrest and detention and with non-discrimination, respectively. A state of emergency had to be declared by the executive or by Parliament itself, and measures affecting fundamental human rights had to be approved by a two-thirds majority of the members of Parliament and could only remain in force for a maximum period of six months. The reason why those details were not given in the new report was that no derogation in respect of section 5 had been approved since 1973, and it had not been necessary to derogate from the provisions of section 16 of the Constitution.

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1/ Subsequently issued under the symbol CCPR/C/1/Add.21.



55. Since it had not been possible to distribute the new report by Mauritius in time, it would probably be best for the members of the Committee to address their questions in writing to the Mauritius Government, which would give detailed replies. In the meantime, however, he would endeavour to provide whatever clarification might be asked of him.

56. The CHAIRMAN said that the Committee might consider that it had completed its examination of the report of Mauritius for the time being, and pass on to the report of Denmark at the beginning of the following meeting.

57. Mr. TOMUSCHAT pointed out that the representative of Mauritius had also offered to reply orally to questions put by members of the Committee.

58. In reply to a question put by Mr. PRADO VALLEJO, the CHAIRMAN said that it was for the members of the Committee to decide whether they wished to put their questions orally or in writing.

59. Mr. GRAEFRATH, supported by Mr. TARNOPOLSKY, thought that the formulation of questions in writing would be a complicated procedure requiring a preliminary exchange of views.

60. Mr. ESPERSEN took the view that the Committee should decide whether to wait until the new report had been distributed before formulating any questions and comments.

61. Mr. OPSAHL said he was inclined to accept the suggestion of the representative of Mauritius, but it would be desirable to co-ordinate questions by members of the Committee to avoid repetitions.

62. Mr. KOULISHEV said that, whatever the solution adopted, it was essential to have an exchange of views, whose general outcome would be conveyed to the Mauritius Government.

63. Mr. GANJI thought that it was necessary to wait for the new report, which had been prepared according to the Committee's guidelines, to be distributed before a constructive dialogue could begin. The representative of Mauritius might reply orally to any questions put to him at that stage.

64. Mr. MOVCHAN took the same view as Mr. Ganji.

65. Mr. VENCHARD (Mauritius) repeated that his Government's wish was to co-operate fully with the Committee, whatever procedure the Committee adopted. It was not absolutely necessary for questions to be put in writing, so long as they were grouped together and the Mauritius Government could reply to them in detail.

66. The CHAIRMAN thanked the Mauritius Government for the very full report it had submitted and for the readiness to co-operate it had shown.

The meeting rose at 1.05 p.m.