

**INTERNATIONAL
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ON CIVIL AND
POLITICAL RIGHTS**



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SUMMARY RECORD OF THE 207th MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 26 March 1980, at 10.30 a.m.

Chairman: Sir Vincent EVANS

CONTENTS

Consideration of reports submitted by States parties under article 40 of the
Covenant (continued)

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The meeting was called to order at 10.45 a.m.

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

Report by Canada (continued) (CCPR/C/1/Add.43)

1. Mr. MOVCHAN joined in congratulating the Canadian Government on the quality of its report. The fact that that Government was represented by a high-level delegation testified to its concern for human rights problems. As a jurist, he was particularly appreciative of the considerable amount of work represented by the report, which seemed to him to be better designed than those submitted in the past by other common-law countries and which also had the merit of conforming in all respects to the Committee's guidelines.

2. He referred to article 50 of the International Covenant on Civil and Political Rights, under which the provisions of the Covenant were to extend to all parts of federal States without any limitations or exceptions; and he stressed that it was not the Committee's task to be concerned with any difficulties that a federal State might have, due to division of competence among various levels of government, in applying the Covenant's provisions. In that connexion, he considered that the explanations provided by the Canadian Government in the introduction to its report, however interesting, had no legal value. What mattered was whether a State Party, federal or not, was applying the Covenant's provisions and whether it had in fact taken the necessary steps for the adoption of relevant legislative or other measures to give effect to the rights enunciated in the Covenant, as it was required to do by the terms of article 2, paragraph 2.

3. With regard to article 20 of the Covenant, Mr. Movchan noted that there was no law in Canada prohibiting propaganda for war, as prescribed in paragraph 1. In that respect, therefore, Canada was not apparently meeting its obligations in full, and he would be grateful if the Canadian Government would provide him with clarifications on the subject since, in his view, the question was one of the highest importance. He noted furthermore that, according to the report, Canada had acceded to the Convention on the Prevention and Punishment of the Crime of Genocide and that the Canadian Criminal Code included a number of articles designed to give effect to that Convention's provisions; but the articles cited did not relate to acts covered by the Convention, namely, those committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, not only by killing members of the group but by deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

4. With regard to the rights of minorities, he said it was arguable that the very fact that there was an Indian Act was a sign of discrimination against that ethnic group. What was the reason for the enactment of special legislation relating to Indians when no such legislation existed for the other ethnic minorities living in Canada? In his view, a delicate legal problem was involved.

5. More generally, Mr. Movchan said that certain passages in the report had not been perfectly clear to him. While the Canadian Government affirmed that, internationally, it undertook to respect and guarantee the rights recognized in the Covenant, it stated that, at the provincial level, no government had yet decided to incorporate in its legislation those of the Covenant's provisions which fell within its competence. Surely there was some contradiction in that situation. Likewise, although in some respects Canadian legislation actually went beyond the Covenant, why had the Interdepartmental Human Rights Committee been given the task of studying federal law in order to determine to what extent it conformed with the Covenant and to recommend appropriate amendments in order to bring it into line with the Covenant?

6. Turning to consideration of the report article by article, Mr. Movchan noted, firstly, with regard to article 2 of the Covenant, by which the States Parties undertook to respect and to ensure the rights recognized in that instrument without distinction of any kind, that some of the distinctions mentioned in paragraph 1 of that article were not mentioned explicitly in the Canadian Bill of Rights, the object of which was to give effect to it in Canada; for example, there was no reference to distinctions based on political opinion, social origin or property. In that respect, it seemed that federal legislation was lagging behind Quebec legislation, and he asked what were the reasons for the difference. Likewise, he inquired whether there had been instances of persons not being appointed to posts in the public service for reasons including their political opinions, since that was one source of discrimination not expressly forbidden by the Public Service Employment Act. On the other hand, the Unemployment Insurance Act, 1971, provided expressly that no discrimination based on national or ethnic origin should be made in referring workers seeking employment; he would be grateful if the Canadian Government would explain why discrimination of that type was expressly forbidden in regard to the unemployed but not in regard to civil servants.

7. With regard to article 3 of the Covenant, the Canadian Government stated that "for several years now Canada has been working to abolish discrimination by reason of sex". Was it to be inferred that it had not achieved that goal in full? If that was the case, it would be desirable to indicate also the factors and difficulties affecting the implementation of that provision of the Covenant, pursuant to article 40, paragraph 2.

8. With regard to article 5, he noted the Canadian Government's statement that it did not intend to change its philosophy regarding human rights; he acknowledged that that attitude was perfectly legitimate on condition, of course, that Canada discharged its obligations under the Covenant.

9. The information submitted in connexion with article 6 was very full, but a reading of subparagraph (c) of the passage relating to paragraph 1 of that article (page 19) gave the impression that a master could inflict bodily harm on an apprentice or servant provided that he did not cause such bodily harm as would put his life in danger or be likely to injure his health permanently. He suggested that the Canadian Government might wish to give fuller particulars on that point.

10. Referring to article 9, Mr. Movchan said he fully shared Sir Vincent Evan's interpretation of that clause. He thought that a warrant was essential for the purpose of making an arrest, and that the person arrested must be informed of the reasons for his arrest. It was surely not normal that the arresting officer could simply indicate that he was acting pursuant to a warrant without divulging its contents. Likewise, he found it hard to understand how it was possible to arrest someone on a simple complaint without conducting an inquiry beforehand in order to determine the substance of the complaint.

11. He considered it regrettable that Canadian legislation did not contain any provision recognizing the right of a person arrested to be brought to trial promptly; he regarded it as a regrettable omission which the Canadian Government should strive to rectify. He asked how many persons were being held in custody awaiting trial.

12. With regard to articles 9, 10 and 11, Mr. Movchan asked, for further details about the Canadian judicial system; in particular, what was the procedure for the appointment of judges? Who nominated them? Who was competent to terminate their office? How was the independence of judges guaranteed? Who supervised police activity? What was the competence of the Canadian Human Rights Commission and what were its limitations? What were its connexions with the courts?

13. Proceeding, he requested clarification concerning the federal law according to which, pursuant to article 14, paragraph 7 of the Covenant, a person who had already been acquitted or convicted of an offence could not be tried or punished again for the same or a similar offence. In particular, he requested the Canadian Government to indicate what the practice was in that field and whether Parliament could enact a law providing for more severe penalties for second or further offences. Was there any case law on the point?

14. He noted that, under the Canadian Criminal Code, anyone in possession of a dwelling house or real property had the right "to defend his property and use reasonable force to do so", and that if a police officer conducted a search without a warrant, when not authorized to do so, the occupant of a house or dwelling might use as much force as was necessary in the circumstances to resist such a search. What was the extent to which force could be exercised in such a situation? Was it permitted, for example, to open fire on the police officer and wound him? He thought it essential to define the limits of self-defence, for an important legal principle was involved.

15. According to that part of the report which concerned the implementation of article 19 of the Covenant, articles 60 and 62 of the Canadian Criminal Code prohibited "seditious words and actions". What was the precise meaning of that rather vague language? In particular, would any act conflicting with the interests of the State be deemed to be seditious? If that was the meaning, it implied a restriction of the freedoms envisaged in the Covenant. The same question arose with regard to radio and television broadcasting. According to the report, the purpose of the restrictions provided for in that field was to protect and enrich Canadian culture and strengthen the country's political, social and economic structure. It was arguable, however, that those restrictions might be equally liable to have an adverse effect on freedom of expression.

16. With regard to article 23, paragraph 2 of the Covenant, concerning the rights to marry, Mr. Movchan said there seemed to be a contradiction between on the one hand article 115 of the Civil Code of Quebec and the common law rule in force in the other provinces - according to which a man and woman could contract marriage if they had attained the full age of 14 and 12 years respectively - and, on the other, article 24 of the Criminal Code, which prohibited sexual relations before the age of 16 years. He asked for further particulars on the point.

17. With regard to article 21, relating to the right of peaceful assembly, he noted from the report that the right was not absolute in Canada and that under article 67 of the Criminal Code it was a punishable offence to participate in an unlawful assembly. Was the meaning of that expression defined by law? If not, who decided that such an assembly was unlawful and by what criteria?

18. It was stated in the report, in connexion with article 25 of the Covenant, that the members of the Senate were appointed by the Governor-General. What conditions had to be fulfilled by candidates for a seat in the Senate and what was the precise scope of the Governor-General's competence in that respect? For example, was the Governor-General empowered to remove a member of the Senate from office?

19. Mr. KOULISHEV commended the Canadian authorities on the responsible way in which they had fulfilled their commitments under article 40 of the Covenant. The report of Canada, which had been prepared in accordance with the guidelines laid down by the Committee, was a valuable source of information and the work involved had not been wasted. It had enabled the Canadian authorities concerned to take stock of the human rights situation and to take measures to overcome difficulties which prevented full implementation of the Covenant. Moreover, consideration of the report in the Committee was producing a most profitable debate.

20. Although the report was very detailed, it still raised a number of questions. The first concerned domestic measures to give effect to the provisions of the Covenant. The report referred to the obligations which the federal authorities had assumed towards the international community by acceding to the Covenant and its Optional Protocol (page 5), to the territorial governments' commitment to ensuring that both men and women enjoyed equally the civil and political rights set forth in the Covenant (page 116) and also to the ratification of the Covenant by Quebec. He asked whether the ratification and the commitments at both federal and territorial levels were purely political or whether they also had legal implications at the internal level. Secondly, he asked the Canadian delegation whether the provinces were empowered to conclude treaties, particularly in the human rights field. With regard to the sharing of powers between federal, provincial and territorial authorities, he inquired whether in practice the system did not cause overlapping and jurisdictional disputes. It was clear from the report that the human rights legislation, in particular the Canadian Bill of Rights, had a privileged status in relation to other laws, even though not part of the law of the land. It was stated on page 9 of the report: "The Canadian Bill of Rights ... allows the Courts to hold as inoperative all 'laws of Canada', as well as the orders, rules or regulations

made thereunder, if such laws, rules or regulations abrogate, abridge or infringe any of the rights or freedoms therein recognized." Had in fact any court made such a ruling? The report also mentioned a considerable number of specialist bodies in the field of human rights. Some of them seemed to have administrative functions and others judicial functions. It would be useful if the Canadian delegation could provide details of those bodies and indicate in particular how their activities were co-ordinated.

21. The report was regrettably silent on the way in which the Canadian authorities implemented article 1 of the Covenant, in particular the provisions of paragraph 1 which contained an extremely important provision, namely, that all peoples "freely determine their political status and freely pursue their economic, social and cultural development". That silence was all the more unfortunate as he believed that implementation of those provisions would in fact give rise to certain problems in Canada. Perhaps the Canadian delegation could fill the gaps in the report and explain to the Committee how its Government intended to resolve those problems.

22. In connexion with article 3, he appreciated that considerable progress had been made at the legal level to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant, but thought it would be interesting to know how the various laws which had been enacted were applied and what was the role of women in political, economic, social and other spheres of life. In the section of the report concerning Saskatchewan (page 461), it was stated: "The area of sexual distinctions is a matter of concern." In his opinion, if there was sexual discrimination in that region, it was the men rather than the women who were the victims. There were laws in Saskatchewan which protected only women's financial situation. Under the Homesteads Act, for example, a husband could not sell the home without the consent of his wife, but a wife could sell the home without the consent of her husband. Also, under the Exemptions Act property of a deceased husband which was exempt from seizure continued to be exempt in favour of a widow or children, but a similar protection was not given to a widower. He inquired what considerations had caused the Canadian authorities to enact such provisions.

23. Regarding paragraph 3 of article 9, he pointed out that the lack of any legislative provision recognizing the right of a person arrested to stand trial within a reasonable time or, failing that, to be released while waiting to stand trial, was at variance with the terms of the Covenant.

24. In connexion with article 10, while noting the great and commendable improvements in the penitentiary system, he asked a question about the disciplinary boards. It was stated in the report that the disciplinary board of a penitentiary institution was "empowered to decide whether or not the accused is guilty following a hearing at which the accused must be present. If he (the chairman of the board) finds the accused guilty, he can impose, where appropriate, a punishment that can range from loss of a privilege to forfeiture of remission and can include solitary confinement for a period not exceeding 30 days" with normal or special food rations (page 38). Could the Canadian delegation explain what was meant by the term "special food rations"?

25. In its comments on article 15, the report made no secret of the fact that there was no constitutional or statutory provision in Canadian law which expressly prevented Parliament from enacting retroactive legislation (page 72) - a state of affairs which he (Mr. Koulishov) considered to be in conflict with the Covenant. He asked whether such a law had been enacted in recent years at either the federal or the provincial level.

26. In respect of article 19 of the Covenant, he asked what exactly the Canadian authorities meant by "seditious words and actions" which were prohibited under the Criminal Code. Had those terms received judicial interpretation?

27. He noted, in connexion with article 20, too, that there was a divergence between the Covenant and Canadian legislation. In his opinion, under paragraph 1 of that article States had a duty to enact legislation prohibiting not only State agencies but also individuals from making propaganda for war. Since Canada had no law prohibiting propaganda in favour of war, any individual or organization could legally make that type of propaganda.

28. He was somewhat disappointed by the comments in the report on article 27 of the Covenant. What was the actual situation of the different ethnic groups and minorities living in Canada? How did the system of internal autonomy granted to the Indian tribes operate in practice? Had the traditional chiefs of those tribes been replaced by chiefs elected in accordance with the provisions of the Indian Act? Was the Indian Act, which was couched in obsolete, if not pejorative terms, a recent statute or did it date from the 19th century? Lastly, he suggested that the Canadian delegation might be invited to provide information about programmes for promoting the development of the different ethnic groups and minorities in Canadian society.

29. Mr. VALLEJO said that the report of Canada was a serious and comprehensive document whose presentation and contents conformed with the guidelines given by the Committee for the preparation of reports. He mentioned, as a point of interest, that the member countries of the inter-American system for the protection of human rights, such as Ecuador, had invited Canada to join the system with a view to strengthening the mechanisms for the protection and promotion of human rights in that part of the world.

30. He did not propose to echo the questions asked by the other members of the Committee or to reiterate points on which they had expressed concern in connexion with the report of Canada. Rather, he would offer some general comments so that the Canadian delegation could better understand the difficulties in the way of full implementation of the provisions of the Covenant in that country, which were apparently the result of Canada's being a federal State with legislation at several levels. In the event of conflict between federal law and provincial or territorial law, what would be the position of the federal Government which was committed to observe the Covenant and to implement it throughout Canadian territory? It was disturbing, for example, to read in the introduction to the report that the Canadian constitution did not authorize Parliament to legislate in fields under provincial jurisdiction to give effect to obligations assumed under a treaty, whereas article 50 of the Covenant provided that the provisions of

that instrument should extend to all parts of federal States without any limitations or exceptions. That was a serious contradiction. Yet it was stated further on in the report that, before acceding to the Covenant and the Protocol, the Government of Canada had consulted the provinces, which had undertaken to respect the provisions of the Covenant coming within their competence. What happened if a Government or a State became party to a treaty and then was unable to carry out all its obligations? It was also a matter of concern that no provincial or territorial government had yet decided to incorporate in its legislation the provisions of the Covenant which came within its competence and that consequently a person who considered that one of the rights or freedoms recognized by the Covenant had been infringed could not appeal under the Covenant and had no remedy available to him except under Canadian law. It seemed clear that federal laws and provincial and territorial laws were not sufficiently well co-ordinated to permit the full implementation of the provisions of the Covenant at all levels. The Committee would need special criteria to consider situations of that kind.

31. A number of points mentioned in the report called for explanation. While it was certainly highly commendable that Canada had set up an Interdepartmental Committee on Human Rights, it would be interesting to learn what results that Committee had achieved to date. Another question was what was meant by the words "most of the rights and freedoms", which were used on page 12 of the report in connexion with paragraphs 1 and 2 of article 2 of the Covenant. Did that expression mean that there were a few rights and freedoms recognized by the Covenant which Canadian citizens did not enjoy? And how could it be claimed that complaints about discrimination under the Canadian Human Rights Act could be subject to "voluntary" resolution (page 11)? The situation and status of Indians were also a matter for concern; he hoped that the Canadian delegation would provide further information on the subject.

32. There were other points which required clarification. In connexion with paragraph 2 of article 9, he said the report contained the surprising statement that under section 29 (2) of the Canadian Criminal Code every person who had been arrested must "where it is feasible" be informed of the warrant under which he had been arrested (page 27), and that a person could be arrested with or without a warrant. He thought the Committee should receive further information on that point. In connexion with article 20 of the Covenant, the report stated that the Canadian Government could not make propaganda in favour of war without contravening its commitments under the Covenant: but there was nothing to prevent such propaganda at the provincial or territorial level. That was another example of the lack of co-ordination he had referred to earlier.

33. Mr. DIEYE considered that the report of Canada was an extremely effective and responsible document. It also showed how difficult it was in a federal system to ensure respect for and uniform implementation of human rights. In that connexion, he thought it was surprising that the Canadian Government had not formulated reservations when acceding to the Covenant, for it was clear from its report that the provisions of the Covenant were not fully applied throughout Canadian territory. He welcomed Canada's ratification of the Optional Protocol to the Covenant. That would be useful in determining whether particular provisions of the Covenant had been violated, and other States should be encouraged to follow Canada's example.

34. The section of the report dealing with the treatment of prisoners was particularly interesting. Prisoners were sometimes subjected to inhuman and degrading treatment in prisons, and it was to avoid such abuses that a number of countries had appointed special judges to deal with the carrying out of sentences. In Canada inmates of penitentiary institutions charged with serious disciplinary offences were brought before the institution's disciplinary board. The Canadian Government was to be congratulated on its recent changes in the system for appointing chairmen of such boards, in the interests of impartiality; it would be useful for the Committee to learn how the chairmen of those boards were appointed and whether inmates could appeal against rulings given by the boards.

35. He was puzzled by the reference to the grant of an absolute discharge, mentioned in the report in connexion with paragraph 3 of article 10 of the Covenant. How could a person so discharged be "deemed never to have committed the offence for which he was convicted" (page 49)? Such a decision would obviously have very serious consequences, both in criminal and in civil law. But what difference was there, under those conditions, between absolute discharge, conditional discharge and free pardon, when in particular the civil consequences of the offence still remained?

36. Two further questions called for clarification. On the question of marriage, it seemed clear that legitimate and natural children enjoyed protection. But what was the status of children of adulterous unions? Could they claim the protection of their parents? Secondly, under the Canadian Criminal Code it was a punishable offence to encourage or abet suicide. What were the elements of that offence? How could it be proved once the victim was dead? If the person committing suicide had left a letter, would it be taken as evidence?

37. One of the main problems arising out of the report concerned the situation and status of Indians. The Indians seemed to be subject to special provisions, and their status apparently differed from that of other Canadian citizens. Mr. Koulishev had quite rightly observed that they were referred to in pejorative terms. The Canadian delegation should give the Committee explanations and further information on the position of those people. If it appeared that they were not enjoying their full rights in Canada, there would be an indisputable case of non-compliance with the provisions of the Covenant.

The meeting rose at 12.55 p.m.