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Tenth session

SUMMARY RECORD OF THE 231st MEETING (CLOSED)

held at the Palais des Nations, Geneva,
on Tuesday, 22 July 1980, at 10.30 a.m.

Chairman: Mr. MAUROMMATIS

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The meeting was called to order at 10.55 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN invited the Committee to examine the question of methods of work relating to the consideration of reports submitted by States parties under article 40 of the Covenant, a matter first taken up at the Committee's third session.

2. Mr. OPSAHL, introducing the discussion, noted that the work of the Committee with respect to reports submitted by States parties was described in article 40, paragraph 4 of the Covenant; the earlier paragraphs of that article described the duties of the States parties and of the Secretary-General. The latter had loyally discharged their duties and it was now up to the Committee to consider how it could best discharge its own duties under paragraph 4.

3. Paragraph 4 invested the Committee with two separate functions. They were to study States' reports and to transmit its reports - which he interpreted as meaning its reports on State reports; there was an additional optional function - the transmittal of such general comments as it might consider appropriate.

4. The Committee had already discharged to some extent its duty to study the State reports, but in his view it had not yet done so in the best possible way. It had asked all States parties questions on the basis of the individual country reports and it had obtained replies and in many cases additional information. It had received a second report from a number of States. In no case, however, had the Committee really studied States' reports by all available methods. For instance, no working group had been established to make an organized analytical study, no special rapporteur had been appointed, and no visits had been made to any of the countries concerned. Those procedures were available to the Committee in principle, although there might be financial implications and difficulties in agreeing on the methodology to be adopted.

5. It was important to determine the nature of the second obligatory function of transmitting reports on States' reports. In his view the Committee had not even started on that work. It had submitted annual reports to the General Assembly containing sections dealing with its study of State reports, but the summary in the annual report did not meet the requirements of article 40, paragraph 4; it was just a digest of the summary records, describing the questions and answers but containing no positive results. The Committee had to find some way of bringing together the written and oral material which it had obtained and of reviewing it. That was abundantly clear from the text and from the purpose of article 40. It was also clear from the Covenant what the results should be; they should relate to the Committee's report on the fulfilment of obligations by States parties. The latter had two kinds of obligation - to submit reports under article 40 and to implement the Covenant. In examining reports the Committee should therefore ask itself whether the State party had reported as it should and whether it had implemented the Covenant, having regard to the factors and difficulties affecting implementation. The Committee had so far taken no action in that respect.

6. One major difficulty in reaching a consensus in the Committee would be to establish a clear distinction between failure to implement the provisions of the Covenant and violations thereof. It was clearly not the task of the Committee under article 40 to arrive at findings on alleged violations. The whole reporting system under article 40 dealt only with implementation and, by implication, with failure

to implement. Allegations regarding violations of the rights of individuals had to be made under the Optional Protocol or possibly under article 41, but the Committee was not authorized to express any views under article 41, as opposed to stating the facts. Complaints regarding violations involved a review of the evidence, and nothing of that kind could be done under article 40. Nevertheless, it was not only possible but also necessary to make an assessment of implementation. In doing so the aim of the Committee should, of course, be to assist States to implement the Covenant rather than to condemn them. For instance, if an inconsistency was found between the legislation of a State and its obligations under the Covenant, it was the duty of the Committee to deal with the matter constructively and to suggest ways of achieving improved implementation. It was quite possible for the Committee to discharge that duty without expressing condemnations. All that would be required would be to elaborate a consistent terminology. It was therefore very important for the Committee to reach a common understanding of what was meant by non-implementation or shortcomings in implementation. Practical difficulties would certainly arise, but they would not be insurmountable. The secretariat could provide more assistance in analysing the discussions which had taken place and in summarizing the most interesting issues in respect of each State without making controversial value judgements. Whether or not the Committee should issue its reports as separate documents, as annexes to the annual report or as chapters within the annual report was a secondary technical point.

7. The third function of the Committee under article 40 was to transmit general comments, if any. Some general comments for inclusion in the annual report might even be adopted at the current session, perhaps embodying comparisons between the State reports submitted so far. For example, the adequacy of those reports in the light of the guidelines could be explored and the function of the guidelines could be explained. The co-operation of States parties could also be discussed.

8. Some general comments as to how States fulfilled their obligation to provide information on their laws and practice could also be formulated. In addition, the difficulties encountered in implementation could be covered, without particular States being singled out. Non-legislative measures of implementation could further be dealt with, as well as issues of interpretation of the Covenant. It would be best to start with the technical aspects and to take up the question of the fulfilment of the obligation to implement the Covenant and common shortcomings in that regard at a later stage. In no case should the Committee report on violations of the Covenant under article 40, although general comments on that subject might be made in exceptional circumstances - for instance, when a State party had admitted violations. The Committee's duty under article 40 was essentially to turn State reports and its reports on them into an instrument for promoting the implementation and interpretation of the Covenant.

9. Mr. GRAEFRATH said he disagreed with some aspects of Mr. Opsahl's approach. Article 40 (4) provided that the Committee should "study" States' parties reports, and it was therefore necessary to determine what should be studied and for what purpose. It was clear from the Covenant that the Committee was not free to determine the subject-matter of its study. States parties had undertaken to submit reports on the measures which they had adopted to give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights, indicating any factors and difficulties which might affect implementation. The purpose of the State reports and of their study by the Committee was therefore to exchange information, to promote co-operation among States, to maintain a steady dialogue and to assist States to overcome difficulties.

10. There was nothing in article 40 to indicate that the Committee was authorized to take the reports on what States parties had done and were trying to do to implement the Covenant as a basis for making a general assessment of the human rights situation, the fulfilment of obligations or violations in particular countries, or for interpreting the Covenant or making recommendations and suggestions concerning specific States. Such an interpretation of article 40 would go far beyond the wording of the Covenant. States had no obligation to follow the Committee's guidelines, to send representatives to attend its deliberations or to listen or reply to the questions put by members. Such procedures were very useful but had no foundation in the Covenant itself. The Committee had therefore already extended its mandate to a considerable extent and it should not allow itself to be converted into an instrument for interference in the internal affairs of States.

11. The Covenant made a clear distinction between the study of State reports and the consideration of communications submitted by States parties under article 41 or by individuals under the Optional Protocol. In the Covenant the word "study" had apparently been used to draw a distinction between fact-finding and conciliatory functions and the reporting procedure. If, when the Covenant had been drafted, the intention had been to conceive the reporting procedure as a procedure for investigating the human rights situation in individual States Parties or ascertaining violations of human rights, unambiguous terms would certainly have been used and a detailed procedure would have been laid down. Articles 41 and 42 and the Optional Protocol provided clear information as to the procedure to be followed by the Committee. No such clear procedure, however, was stipulated in article 40, and consequently the Committee was not in a position to develop a procedure which had not been agreed upon by States parties. If the authors of the Covenant had intended the Committee to evaluate the human rights situation in a given country, they would undoubtedly have stated so.

12. Rule 70, paragraph 3, of the rules of procedure contained some kind of provision to that effect, but when the rules of procedure had been drawn up the Committee had had no experience and had reserved the right to review them as necessary. Moreover, the rules of procedure could not serve to confer upon the Committee a mandate which it did not enjoy under the Covenant.

13. Mr. Opsahl had referred to the question of general comments. Under the Covenant the Committee could make general comments in connexion with its study of State reports. That was not the same as making recommendations and suggestions concerning a specific State. In the International Convention on the Elimination of All Forms of Racial Discrimination the formula "suggestions and general recommendations" was used. There had been proposals to insert the word "general" before the word "suggestions" and to delete the word "general" before the word "recommendations", but both proposals had been rejected. The rapporteur of the Committee on the Elimination of Racial Discrimination had concluded that, by retaining the word "suggestions" and by leaving it unqualified, the authors of the Convention had wanted to avoid language which might have inhibited the Committee from adopting suggestions relating to particular cases and that by retaining the qualification "general" in relation to the recommendations which the Committee might make, the authors appeared to have intended that the competence of that Committee to recommend was to be exercised only in situations of general relevance. No suggestions or recommendations had been addressed to individual States parties.

14. The situation under the Covenant was not so complicated. Article 40 included, not the term "suggestion", but only "general comments". The latter could not, in his view, be addressed to a particular State. That was clear from article 40, paragraph 5, which gave States parties the right to submit to the Committee observations on any comments that might be made. In his view it would be a very strange procedure for the Committee to address a comment to an individual State and at the same time give all States parties the right to make observations on such a comment. If the intention had been that comments should be addressed to individual States or groups of States, that would have been indicated in article 40, paragraph 5. Whenever the Covenant dealt with individual State parties, the term "States parties concerned" was used, not simply "States parties".

15. As he understood article 40, the purpose of the Committee's study of reports was not to evaluate the situation in a particular country but to assist countries in promoting human rights and in implementing the Covenant and any comments made by the Committee should not be addressed to particular States. Such general comments could be addressed to States parties as a whole and to the United Nations and should draw attention to what further action was needed to implement human rights and possibly suggest studies to be undertaken. In that latter respect, he agreed with Mr. Opsahl.

16. The implementation of article 40 differed from that of article 41 and of the Optional Protocol. Moreover, in his view, the provision in article 45 that the Committee should submit an annual report to the General Assembly did not concern individual State reports. The annual report was to be sent only to the General Assembly through the Economic and Social Council, and not to States parties. Any reports prepared by the Committee in implementation of articles 41 and 42 should be addressed only to the States concerned and be limited, as article 41 (1) (h) stated, to a brief statement of the facts.

17. As he saw it, the Committee's task was to formulate general comments on particular human rights topics deduced from the contents of the reports of States parties. He was prepared to envisage an improvement in the Committee's methods of study of States parties' reports, but he failed to see how the Secretariat could improve on their presentation.

18. Mr. PRADO VALLEJO said that the present discussion was immensely important since, in his view, the Committee had not done all it should have done in considering reports submitted under article 40.

19. The purpose for which States had adopted the Covenant had been the promotion and defence of the human rights set out therein, and the Committee had been established to ensure fulfilment of that purpose. Signature of the Covenant implied the assumption of precise responsibilities. The obligations of States parties were to implement the rights recognized in the Covenant and to submit reports on how they were doing so. One of the reasons for submitting a report was to enable States parties represented on the Committee to realize what was the human rights situation in the State concerned. The Committee's task, on the other hand, was to study those reports, and it had been its practice hitherto to examine them in the presence of a representative of the State concerned, so that members could make comments and draw conclusions.

20. He agreed that rule 70 of the rules of procedure had been approved only after much discussion, but he considered it to be of great importance. Paragraph 3 of that rule provided that if the Committee determined that some of the obligations of a State party under the Covenant had not been discharged, it might make such general comments as it considered appropriate. The Committee should ask itself for whom those comments were intended. In the first place, they were intended for the State party concerned and, secondly, they should be sent to other interested parties. They should concern any failure to implement article 40 and also a State party's general performance under the Covenant. The comments should be constructive and designed to help States to promote human rights. They should not pass judgement. Moreover, it was obvious that all States found it difficult to implement each and every one of the rights provided for in the Covenant, and the Committee might therefore make recommendations enabling those States to overcome their difficulties. Further, world public opinion at the present time expected general comments on reports. The comments should be made speedily, for the situation regarding implementation of human rights was constantly changing, particularly in Latin America.

21. It was true that the Committee had worked hard during its four to five years of existence, but it must do more. Although rule 70 of the rules of procedure had been adopted at a relatively early stage in the Committee's life, he felt that it faithfully interpreted the intention of the Covenant.

22. As could be seen from the Committee's summary records, comments had been made by individual members on lacunae in particular countries' reports - for instance, failure to abolish capital punishment, apparent discrimination against women or failure to provide adequate facilities for legal advice and consultation. When the report of Colombia had been studied, for instance, he himself had stated that Colombia had failed to comply with article 4 of the Covenant and that the existence of the state of siege in that country had obviously restricted human rights. Why, therefore, should the Committee as a whole not express its views in similar fashion? He therefore suggested that working groups might be established to draft such general comments. That would represent a significant step forward in the Committee's work.

23. Mr. SADI said that the value of the Committee's consideration of reports by States parties was not as great as it might be. States parties' reports were read and defended, questions were asked by members of the Committee and then the representatives of the States concerned departed and no more was heard about what had been said.

24. The Committee should interpret the Covenant in a liberal, rather than a conservative way. He himself read article 40, for instance, in the light of the whole Covenant and in conjunction with article 2 in particular. He would like the Committee to reach a consensus on that interpretation. States parties should receive the Committee's comments on their reports and be given clear ideas on how they could improve their legislation and even their practice regarding human rights. The comments would be of particular value to developing countries which were inexperienced in implementing human rights. Such comments had been made in connexion with Chile and that practice should be adopted in connexion with other countries too. He therefore agreed with the views expressed by Mr. Prado Vallejo.

25. Mr. BOUZIRI said that accession to the Covenant was a voluntary act on the part of States parties, a step which some countries hesitated to take because of the specific obligations it imposed. The reporting procedure required States parties to demonstrate that an effort had been made to promote and protect the rights specified in the Covenant. For its part, the Committee had obligations, under article 40 (4), to study States' reports and to transmit its own reports to the States parties, and should respect that obligation.

26. Thus far, the procedure followed in studying States parties' reports had been established on an empirical basis. The fact that a special Committee had been established by the International Covenant on Civil and Political Rights, and not by the International Covenant on Economic, Social and Cultural Rights, placed a special responsibility on the Committee. Admittedly, the preparation of reports on individual countries would be time-consuming and the establishment of working groups for that purpose would be necessary.

27. In his view, the Committee had not fulfilled its obligations under article 40 (4) of the Covenant. During the study by the Committee of a report submitted by a State party, a member would from time to time point out that a right embodied in the Covenant did not appear to be covered by the legislation of that country. For instance, attention had been drawn, in certain cases, to the fact that there was no legislation prohibiting propaganda for war, as required by article 20, or that legislation did not prohibit discrimination on all the grounds listed in article 2, including "political or other opinion". The fact that individual members of the Committee had thus highlighted gaps in domestic legislation was a beginning, but it did not constitute the collective action by the Committee called for by article 40 (4).

28. In his opinion, rule 70, paragraph 3, of the Committee's rules of procedure was perfectly clear. He disagreed with Mr. Graefrath's apparent belief that the Committee should not make an individual report for each country.

29. In his view, the Committee had a duty under article 40 (4) to study the various State reports collectively, even though that would impose a very considerable burden of work in the future. If the Committee did not fulfil its obligation in that respect it would be wasting time and money, and by its failure to draw attention to derogations from the Covenant it would be implicitly condoning violations of human rights in certain countries - a totally unacceptable outcome. Members of the Committee must express their views. The Committee was not a court of law, but its function was to aid countries to fill gaps in their legislation and thus ensure that States parties respected the Covenant. That was his interpretation of the Committee's duties under article 40.

30. He suggested that in future, immediately after the representative of a State party had introduced its report and replied to points raised, the Committee should meet in closed session to analyse the answers received to the questions asked so as to determine which questions had in fact been answered and how clearly they had been answered. It would thus become apparent to what points attention should be drawn in the Committee's report.

31. Mr. DIEYE drew attention to a defect in the Committee's procedure. At present, events took the form of a monologue in which the representative of a State party submitted his country's report and the Committee then presented its views on the report but without undertaking any follow-up action.

32. Two opposing views had been expressed at the current meeting, one of a dynamic nature and the other more prudent. However, if those views, as expressed by Mr. Opsahl and Mr. Graefrath, were examined, it might be found that they were not in fact absolutely incompatible.

33. Mr. Opsahl had said that the Committee should assess reports by States but should be careful not to lay undue stress on violations of human rights. He (Mr. Dieye) wondered whether it was possible to make a general assessment without at the same time noting certain individual violations. He agreed that there should be an assessment, but it must be of a dynamic nature and not merely abstract, static or academic. Only by producing a dynamic assessment could the Committee comply with rule 70 of the rules of procedure.

34. Another argument, which had been expounded by Mr. Graefrath, was that the Committee should be prudent. He was in full agreement on that point. The Committee must not frighten off States parties or discourage States which might be considering ratifying the Covenant. Nevertheless, although prudence was required, the Committee must not lose sight of the rules embodied in the Covenant.

35. He, himself, did not accept the way in which Mr. Greafrath had defined the word "study" in article 40. The provisions of that article were perfectly clear. The Committee's comments must be based on specific reports by States parties and there must be specific studies of those reports. It was correct to say that the Committee must be careful not to utter a condemnation of a State, but it must bring to light any violation of the Covenant which might occur in order to enable States to take the necessary steps to amend their legislation so as to put an end to such violations. Difficult as the task might be, it was for the Committee to attempt to help the States concerned and the States themselves, for their part, must have a realization that they needed help. Clearly, some States would be more willing to accept such help than others.

36. He believed that, with goodwill, it should be possible to reconcile the views expressed by Mr. Opsahl and Mr. Graefrath and to reach a satisfactory conclusion. It was necessary to devise a suitable procedure. Perhaps, as suggested by Mr. Bouziri, the Committee should meet after hearing the introduction of a report by a State party. If it was then pointed out to the State concerned that it had not replied to certain questions or had not replied adequately, that might enable the State to produce more satisfactory and fuller answers. If, after a second opportunity to reply, the Committee still considered that the State had not answered the questions satisfactorily, it could draw the obvious conclusions.

37. Mr. LALLAH said that while he sympathized with many of his colleagues on the Committee who had expressed impatience at its lack of progress, it must be remembered that the follow-up action required under article 40 of the Covenant had been a matter of concern since the Committee's third session. Reference to the Committee's summary records CCPR/C/SR.48, 49, 50, 55 and 73 and to documents A/33/40, paragraphs 16-17, and A/34/40, paragraphs 15-20, not to mention the many informal discussions which had taken place in the Committee, would show what conscientious efforts it had made to try to devise a way of helping States parties. The current meeting might be one of the most fruitful which had been held on that topic, and he paid tribute to Mr. Opsahl and Mr. Graefrath for their excellent statements. He had drawn encouragement from a certain convergence of approach between those two members; they agreed on the need for further action by the Committee and disagreed only on precisely what form such action should take.

38. On the question whether there was a need for the Committee to draft a separate report on each of the reports submitted by States parties, Mr. Graefrath, comparing articles 40 and 45 of the Covenant, had intimated that the use of the plural form "reports" and of the plural "States Parties" in article 40 (4) was significant. It was indeed significant, but not in the way Mr. Graefrath thought. Mr. Graefrath contended that article 40 (4) meant that the Committee should transmit its comments to all States parties in one all-embracing report. He totally disagreed with that view. Under article 40 the Committee was required to study the reports submitted by each State party and to prepare its own reports and comments thereon, on an individual basis. Mr. Graefrath had said that nowhere else in the Covenant was there a provision requiring the Committee to transmit reports to States parties, and in that connexion had referred to article 45. It was clear, however, that the report mentioned in article 45 was not the same as the reports referred to in article 40.

39. The Committee's work in studying reports submitted by States parties might be subdivided so that, in the first place, it would entail an information-gathering process carried out by individual members. In that respect he agreed with the approach advocated by Mr. Opsahl, but he would, like Mr. Dieye, go further and suggest that in some way the Committee must make concrete assessments of specific situations. He therefore insisted that there must be a specific report by the Committee on each State party's report, following which there could be a report embracing general comments.

40. Mr. TOMUSCHAT suggested that, in view of the importance of the wide-ranging discussion which had taken place, the summary record of the meeting should be given general distribution, despite the fact that the meeting was a closed one.

41. It was so decided.

The meeting rose at 1.05 p.m.