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# International Covenant on Civil and Political Rights

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## Human Rights Committee
**Eighty-ninth session**

**Summary record of the 2431st meeting**
Held at Headquarters, New York, on Thursday, 15 March, at 3 p.m.

*Chairperson*: Mr. Rivas Posada

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07-27082 (E)

*The meeting was called to order at 3.05 p.m.*

**Organizational and other matters** (*continued*) (HRI/MC/2007/5 and HRI/MC/2007/2)

*Report of the meeting of the working group on reservations* (HRI/MC/2007/5)

1. **Sir Nigel Rodley** presented the report of the meeting of the working group on reservations (HRI/MC/2007/5). The working group had met for a second time in Geneva on 14 and 15 December 2006, because representatives of two of the committees particularly concerned by the issue of reservations, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women, had not been present at the first meeting. At the December meeting, representatives of those Committees had made presentations on their own practice, which had been missing from the proceedings of the first meeting.

2. There had followed a general exchange of views, including consideration by all the committees of the recommendations contained in the report of the previous meeting (HRI/MC/2006/5/Rev.1). He recalled that the Human Rights Committee had had some problems with the recommendations that had come out at the previous meeting, particularly recommendation 6. In the light of the International Law Commission's *travaux préparatoires*, some members were concerned that the previous meeting had described as constituting a step forward the criteria for determining the validity of reservations contained in the draft methodological guidelines set out in the tenth report of the Special Rapporteur of the International Law Commission on reservations to treaties (A/CN.4/558/Add.1). The text of the recommendation had therefore been changed to note the potential significance of the criteria.

3. The Committee's main concern was the way in which the working group at its first meeting had dealt with the issue of the legal effect of reservations that could be incompatible with a given treaty, particularly its object and purpose. It had been argued that there would be a rebuttable presumption that the treaty in question would continue to apply. That was considered to be a substantial weakening, however, of the position set out in the Committee's general comment No. 24, which took the view that normally a treaty would continue to apply without the benefit of the reservation. The meeting had not quite adopted the wording of the Committee in its reservation, not least because it would not have added much and because it neither defined nor specified the consequences of abnormality. The meeting had therefore built on a statement already put before the International Law Commission by its Special Rapporteur, who had taken the view that an invalid reservation was to be considered null and void. Therefore, recommendation 7 stated that a State would not be able to rely on such a reservation and, unless its contrary intention was incontrovertibly established, would remain a party to the treaty without the benefit of the reservation.

4. The other novelty in the report was in recommendation 9, which essentially built on what had been the second sentence of recommendation 8 of the previous report and which gave guidance to the committees on how to approach reservations. The recommendation largely reflected the Committee's practice. It was based on a draft proposed by the secretariat, which was anxious to get the other committees to fall into the predominant practice of the Human Rights Committee. Nothing in recommendation 9 was inconsistent with Committee practice.

5. Lastly, he drew attention to recommendation 10, in which the working group recommended that the inter-committee meeting and the meeting of chairpersons of the human rights treaty bodies should decide whether the working group should convene another meeting to take into account the reactions and queries of treaty bodies in respect of its recommendations and any further developments in the International Law Commission on the subject of reservations to treaties. It seemed premature at the present stage to consider whether to hold a future meeting of the working group before the May 2007 meeting of representatives of each of the treaty bodies and the Commission.

6. **Ms. Wedgwood** (United States of America) said that there were significant differences between recommendation 7 contained in the report of the meeting of the working group on reservations held in June 2006 (HRI/MC/2006/5/Rev.1) and the revised recommendation 7 in the current report. The recommendation put forward at the previous meeting stated that the consequence that applied in a particular situation depended on the intention of the State at the time at which it had entered its reservation. It further stated that that intention must be identified in a serious examination of the available information, with the

rebuttable presumption that the State would rather remain a party to the treaty without the benefit of the reservation than be excluded. The revised recommendation stated that a State would not be able to rely on an invalid reservation and, unless its contrary intention was incontrovertibly established — a very high standard — would remain a party to the treaty without the benefit of the reservation.

7. An incontrovertibly demonstrated intention, however, was a standard that was almost impossible to meet. It seemed that the practice of the Committee in recent years had been to avoid the issue of reservations and interpret general comment No. 24 broadly. She therefore noted with surprise the unremitting adverb "incontrovertibly" and would welcome further clarification on the recommendation.

8. In Communication No. 1008/2001, the author had asserted her right to succession to the ranks and titles held by her father as the firstborn daughter and claimed to be a victim of violations of the Covenant by Spain. Spain had taken a reservation to the Convention on the Elimination of All Forms of Discrimination against Women, stating that the Crown was exempt from any norm of gender equality. However, Spain had not taken a similar reservation to the Covenant, because at the time at which it had acceded to the Covenant, the Committee was not reading article 26 with as much breadth as at present. One problem with the progressive development or interpretation of the law was that reservations could be made only at the time of accession to the treaty. While the Committee did not favour reservations, dynamic interpretations of treaties might create pressures for a dynamic doctrine of reservations. If article 26 of the Covenant was to be read as reflecting the Convention on the Elimination of All Forms of Discrimination against Women, then the Committee should give consideration to Spain's manifest intention and its reservation, regardless of whether it was attached to a different treaty.

9. **Mr. Shearer** wondered whether the Committee's general comments had previously dealt with the issue of very broad reservations to treaties. While it was not a problem for the Covenant, under certain other international human rights conventions, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, several States had entered some extremely broad reservations. A State party's acceptance of a convention might be subject to the provisions of its constitution or religious law or the Koran, to mention a few examples. It was unclear whether in such cases the reservations were void for uncertainty. He would welcome further discussion on the approach to be taken to reservations of that kind.

10. **Mr. O'Flaherty** said that it was unclear what form of interaction would take place at the meeting of the International Law Commission with treaty bodies mentioned in paragraph 2 of the report. He would like to know whether the existing working group would be reconvening or whether some other format was envisaged. In connection with paragraph 4, reference had been made to the International Court of Justice judgement on the case of *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Rwanda*) and to concerns that it appeared to limit the role of the Committee in determining the validity of reservations. He would appreciate further information on the extent to which the working group had considered the need to specifically address that development in its own report. Recommendation 6 of the report, setting forth an autonomous set of criteria for determining the validity of reservations, would appear implicitly to be inconsistent with the logic of the Court decision. He would be interested in hearing about the extent to which the issues raised by the judgement were being specifically addressed by the working group. Lastly, he took issue with the suggestion in paragraph 12 of the report that the Committee was less inclined to consider the validity of reservations in the context of reviews of periodic reports, as that conclusion was based on a single case.

11. **Ms. Motoc**, referring to the aforementioned judgement, asked whether the working group had discussed the joint separate opinion of Judge Higgins, Judge Kooijmans, Judge Elaraby, Judge Owada and Judge Simma, which referred to the Committee's general comment No. 24.

12. **Ms. Chanet**, noting with appreciation the current report's revised recommendations concerning reservations to treaties, said that it posed far fewer problems for her than the previous text. The International Law Commission would take time before it could adopt a final text on the validity of reservations under international law, and the situation concerning reservations was not yet firmly established. The Committee must not fall short of the proposal mentioned in the recommendation of the Special Rapporteur of the International Law Commission.

Furthermore, the Committee's interpretation of treaty obligations should not differ from those of States, which might be more concerned with State sovereignty than human rights with respect to reservations. Efforts to find agreement with the Special Rapporteur were therefore particularly welcome.

13. **Sir Nigel Rodley** said that the wording of the previous text of recommendation 7 had been universally criticized within the Committee as being much too weak. The text had been revised accordingly to reflect what he took to be the understanding of the Committee. The fact that the Committee had avoided reservations issues generally was beside the point. That issue was addressed in recommendation 9. The Committee did not, of course, make a point of taking up reservations for their own sake. No Committee saw the need for confrontation, especially within the context of periodic reviews, where dialogue was particularly important. Reservations should be considered when a confrontation was inevitable, for example in dealing with individual cases. Another such circumstance might be fact-finding inquiries under the procedure outlined in article 20 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. That would also be true for the Committee on Enforced Disappearances. Under such circumstances, the Committee must be aware of the State's obligations and the State's view on those obligations. The norm put forward in the recommendations concerning reservations was intended to constitute the basis on which the Committee would address such a situation of confrontation.

14. The issue of inconsistent reservations was addressed in paragraph 9. No treaty body would feel obligated to pay attention to a reservation made to a treaty other than its own. In such circumstances, the position that there was no reservation should prevail.

15. The working group had not directly discussed broad and vague reservations. While there were few such reservations to the Covenant, there were many to the Convention on the Elimination of All Forms of Discrimination against Women, for example. The working group did not consider the issue to be controversial. In addition, vague and general reservations had been discussed in the report of the Special Rapporteur (paras. 107-115).

16. Concerning the forthcoming May 2007 meeting between the International Law Commission and treaty bodies, it was for the Committee to decide who would be sent. The Committee was in no way bound by virtue of the fact that he had been appointed to represent it at the two sessions of the working group.

17. Concerning the issue relating to the case of the Democratic Republic of the Congo, there had been no follow-up, because it only affected the International Convention on the Elimination of All Forms of Racial Discrimination, which had a numerical determinant as to whether or not a reservation was consistent with its object and purpose. It was extremely unfortunate that the International Court of Justice had decided to interpret the relevant provision of the Convention as narrowly and literally as it had. Although the working group had discussed the judgement, it considered that the issue was beyond its scope and that addressing it would not be helpful. It also bore in mind the Court's attitude towards criticisms by other bodies in the international system, as was shown in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*).

18. With regard to the statement in paragraph 12, it was his belief that the Committee might be less inclined to come to the conclusion that a reservation was valid in the context of the review of periodic reports. If he was mistaken, no particular consequences would result from it, as there had been only one instance in the previous 12 years when the Committee had decided within the context of a review of periodic reports that a reservation was incompatible with the object and purpose of the treaty.

19. Lastly, he concurred with Ms. Chanet that the Committee's previous position was out of line with the currently evolved position of the Special Rapporteur, which had developed considerably since the time of the first report of the working group. He hoped that the International Law Commission would agree with the Special Rapporteur when the time came to finalize the text on legal consequences of the invalidity of a reservation.

20. **Mr. Gillibert** (Secretary of the Committee) gave some details of the proposed International Law Commission meeting. A letter had been sent to all treaty bodies, inviting each of them to send one representative to a discussion of issues relating to

human rights treaties. The meeting would take the form of an exchange of views between members of the International Law Commission and human rights experts. Discussion would focus, inter alia, on the preliminary conclusions adopted in 1997 by the International Law Commission on reservations to normative multilateral treaties, including human rights treaties; other issues relating to reservations to human rights treaties, for example the effect, if any, of reservations incompatible with the object and purpose of the treaty; or consequences of the findings of human rights treaty bodies.

21. **Ms. Wedgwood** stressed that there was a triadic relationship among the Committee, the International Law Commission and States parties. The fact that the Committee was now in agreement with the views of the Special Rapporteur of the International Law Commission did not necessarily mean that States would not have views of their own.

22. The assumption that the appropriate standard was "incontrovertible intent" raised the issue of how that incontrovertibility could be proved. Furthermore, if the standard that the Committee was now proposing had not been clear as a matter of law at the time that most States had acceded to the treaty and expressed their reservations, States might not have thought to establish the litigation record that would be desirable for an easy diagnosis of incontrovertible intent. If the Committee was going to demand incontrovertible intent and, at the same time, rule out the relevance of any post-ratification, post-reservation statements by the State party, it would be virtually impossible for a State to meet the standard.

23. Additionally, it was hard to have a segregated corpus of reservation law. That would affect the way that reservations were regarded, not only for human rights treaties, but for others as well. If the predictability of what a State was undertaking, on becoming party to a treaty and expressing a reservation, were to be too severely eroded through dynamic interpretation of the treaty and thus of the State's reservations, it would be hard to persuade parliaments to agree to join treaty regimes.

24. There was currently a major debate on the inherent tension between democracy and international law, and the Committee should not exacerbate that. Making it too difficult for States to rely on the reservations they thought they had made would defeat the intention of having highly inclusive treaty bodies.

25. **Mr. O'Flaherty**, expressing gratitude for the information about the International Law Commission meeting, sought confirmation that the only topic for discussion would be that of reservations. While he fully respected Sir Nigel's response with regard to paragraph 12 of the working group's report (HRI/MC/2007/5), he felt that the Committee should reserve — and protect — its right to consider a reservation invalid in the context of the review of periodic reports, even if it rarely did so in practice.

26. **Mr. Gillibert** (Secretary of the Committee) confirmed that the only topic for discussion at the International Law Commission meeting would be that of reservations.

27. **Ms. Chanet** expressed her support for the formulation in paragraph 12 of the working group's report. In the past the situation had been different, and in cases of countries with extensive reservations, such as those that subordinated treaties to sharia law, the Committee had indeed commented on the validity of such reservations. As Sir Nigel had indicated in paragraph 12, however, it no longer tended to do so.

28. **Sir Nigel Rodley** said that he had nothing to add to Ms. Chanet's remarks on paragraph 12. The working group's report was a reflection of the circumstances he had described, and he hoped that other Committee members did not feel that it bound the Committee to any particular course of action.

29. **Ms. Wedgwood** had been right to draw attention to the reaction of States parties. The Committee did not operate in a vacuum, and had to give consideration to what the position of States might be. Very often, the position of the States was not exactly consistent. Their legal position was not necessarily that of the lowest common denominator, especially if that lowest common denominator was based wholly on a "founding fathers" approach to treaty interpretation as opposed to a "living instrument" approach which did indeed take account of subsequent State practice.

30. It was true that "incontrovertible intent" was a high standard, but in his view it did not represent an attempt to carve out anything special for human rights. The position of the working group, with which everything else was consistent, was outlined in its recommendation 3. The argument for the threshold

notion of incontrovertibility of intent flowed rather from the content of the treaty. It would be extremely rash to assume that if a reservation were incompatible with the object and purpose of the treaty, a State would not be a party to it; thus, the question was essentially what the threshold of proof was.

31. Some States wanted the Committee to take into account subsequent practice when it was negative, but not when it was positive. The Committee had taken a very firm "founding fathers" approach to treaty interpretation in its dialogue with a State party the previous July, having been very much at pains to argue that subsequent State practice had to be taken into consideration, a position that had not been easily digested by the State party in question.

32. States were ultimately the determinants of their own obligations, and it would be best if the Committee could bring them round to its own view rather than staking out a position against them. The Committee should be trying to move States parties away from a position that was not necessarily consistent with the object and purpose of the treaty in question.

33. **Ms. Wedgwood** said that changes in the Committee's standard for judging a State's reservations raised the issue of what was admissible evidence as to the intent of the State. It was a general rule that before dealing with a contentious issue, one built a record of evidence, but since general comment No. 24 had been finalized after the accession of many States to particular treaty instruments, and given that the idea of "incontrovertible intent" was also new, States might not have established the record that they would have wished to if they had known how the Committee would eventually interpret the law on reservations.

34. States parties' statements as to what they believed their intent to have been at the time would have to be thought through in a principled way, particularly as the Committee was not bringing up reservations during the examination of State parties' reports, and might therefore be limited to what the State had said at the time of its ratification of the treaty. It should be possible to demonstrate to States that, even admitting later statements, they could still meet the standard. If a State told the Committee in good faith, however, that at the time it had acceded it had thought that its reservation was a condition of its assent, the Committee should probably accept it rather than ruling it inadmissible a priori. Dynamic interpretation was a process of dialogue.

35. **The Chairperson** said that there might be scope for further discussion of the issue in the context of responding to the invitation from the International Law Commission.

*Report of the working group on harmonization of working methods of treaty bodies* (HRI/MC/2007/2)

36. **Mr. Amor**, reporting on the meeting of the working group on the harmonization of working methods of treaty bodies, which he had attended in Geneva on 27 and 28 November 2006 as the Committee's representative together with the six representatives of the other treaty bodies, drew attention to the report of the proceedings drawn up by the secretariat (HRI/MC/2007/2). The opinions he had expressed throughout the meeting had reflected the positions taken by the Committee in document CCPR/C/88/CRP.3/Rev.1.

37. There had been a rich and occasionally intense debate on general issues and on a specific proposal by the Committee on the Elimination of Racial Discrimination. There had been unanimous agreement that a unified standing treaty body — an idea originally put forward by the United Nations High Commissioner for Human Rights — was necessary, but that it was desirable to harmonize the working methods of the treaty bodies.

38. It had been agreed that the mechanism for achieving that would have to be a body representative of the various committees, but opinions differed as to whether it should replace the annual meeting of chairpersons of human rights treaty bodies and the inter-committee meeting or constitute a separate body. He himself had argued for replacement (report, paras. 7 and 13). There had also been no agreement on the composition of the new body, the term of its members, and how often it would meet each year (para. 14).

39. The mandate of the new body, it had generally been agreed, would be to review the methods of considering State party reports and formulating general comments; but representatives had not seen eye to eye on the handling of communications. Views had also varied on the extent of the new body's contacts with the Human Rights Council, although all had agreed

that, at the very least, there should be an exchange of information.

40. The powers assigned to the body needed further discussion: some had argued for merely the power to make recommendations to the treaty bodies, others for actual power to harmonize working methods, and others for intersessional action only.

41. The specific proposal put forward by the Committee on the Elimination of Racial Discrimination — that the individual committees should continue to work separately but that all communications should be centralized under a single complaints body — had generated a good deal of discussion. Initially, the thinking had been that it would be unnecessary, but the representative of the Committee on the Elimination of Racial Discrimination had held doggedly to his position and begun to sway others, although no conclusion had been reached. He himself had spoken frankly against the proposal. His impression was that its proponents underestimated the legal and political difficulties involved, and were not familiar enough with how the Human Rights Committee dealt with communications or with the different kinds of texts involved. The proposal, to his mind, would jeopardize the whole system of receiving communications. If it were adopted, responsibility should be given to the Human Rights Committee, but that was not desirable either.

42. The statistics spoke to how differently each treaty body dealt with communications: the Human Rights Committee devoted 10 to 15 meetings to communications per year, the Committee against Torture 3 meetings, the Committee on the Elimination of Racial Discrimination 1 to 3 meetings, and the Committee on the Elimination of Discrimination against Women 2 to 4 meetings; as to the number of communications received and acted upon, the respective figures were 1,502 received and 1,216 concluded, 305 received and 259 concluded, 38 received and 34 concluded, and 12 received and 6 concluded. The reality of the issue was therefore very different, depending on the committee.

43. Throughout the meeting, he himself had remained very open to the necessity and usefulness of harmonizing working methods, whereas others had seemed suspicious of the idea. And his general impression was that the other committees, while well-disposed to the Human Rights Committee, were somewhat mistrustful of it.

44. The working group was scheduled to meet again during the second week of April 2007.

45. **The Chairperson** said that Mr. Amor had discharged his task well on a developing issue, and asked him to keep the Committee informed of his contacts with the group and his impressions. Many of the proposals under discussion went to the heart of the Committee's work and could seriously compromise it.

46. **Ms. Chanet** said that three salient points emerged from what seemed to have been a turbulent meeting. Since a unified treaty body was clearly unfeasible, the question then became how to ensure the consistency among treaty bodies that had been shown to be lacking in the current system.

47. She was worried about the proposal by the Committee on the Elimination of Racial Discrimination. Its representative's surprising insistence at the meeting seemed to have worked, because some of the other representatives, unconvinced by Mr. Amor's arguments, had gone so far as to suggest the creation of a smaller working group to examine the proposal (report, para. 26). She was amazed that the Committee against Torture was supporting the proposal (report, para. 8). To accept the proposal would be a total dilution of the complaints procedure, an argument to which the Committee on the Elimination of Racial Discrimination turned a deaf ear, as it had to the legal problems involved, for example, that different States parties had acceded to the individual treaties.

48. **The Chairperson** pointed out that the heading preceding paragraphs 22 to 33 of the report read "Preliminary" points of agreement, and in that he saw perhaps some reason for optimism to temper Madame Chanet's pessimism.

49. **Mr. Amor** observed that the report had not been drafted in the course of the meetings, but rather that a text prepared by a member of the human rights secretariat had been circulated for comment later.

50. **Mr. O'Flaherty**, noting that the High Commissioner herself had attended one of the meetings, asked for Mr. Amor's sense of whether she was still fully committed to the ideas she had put forward in her original concept paper, for that might affect the impasse on how to proceed with what was on

the table. Also, he wondered if an intergovernmental conference was still scheduled to take place.

51. In his view, the creation of yet another body to harmonize working methods (report, para. 13) rather than reconfiguring the inter-committee meeting and the meeting of chairpersons would be no solution. Also, the relation of the treaty bodies with the Human Rights Council — treated very weakly in paragraph 24 of the report — was a matter that should be given more urgency, for the Council was moving ahead with its procedures while the treaty bodies discussed it. The Committee should recommend that the inter-committee meeting should put the matter on its agenda in June and invite the head of the Council to attend; and in the meantime, the Committee should formulate its ideas about how the relations in question should develop.

52. **The Chairperson** said that a meeting of treaty body chairpersons was scheduled for 14 and 15 June 2007, in advance of the inter-committee meeting.

53. **Sir Nigel Rodley** said that the secretariat should never be given the responsibility for reporting on the conclusions of a meeting. Committee experts should draft their own report, or there should be no report at all. The Committee should mandate Mr. Amor to take that position and to say that, in the future, the points of agreement must be decided by the participants at the meeting. As it was, the "preliminary points of agreement" in the working group report probably had a status they should not have.

54. He agreed with Mr. O'Flaherty that it was not wise to talk of establishing a new body, a signal for institutional jockeying, rather than reconfiguring the existing bodies. What he did not find in the report was an account of any substantive discussion of proposals for useful new procedures, such as Mr. Amor's proposal that after the initial State party report, the State party responses to the lists of issues could serve in lien of subsequent reports. The matter had apparently never come up. The Committee should therefore stake out for itself an insistence on having more discussion next time of substantive harmonization issues. Also, Mr. Amor should make it clear that the Committee was against the establishment of a small working group to consider the creation of a unified body for communications (report, para. 26).

55. **Ms. Motoc** said that the Committee's concerns were not exaggerated, because the so-called reform of the United Nations and the human rights bodies seemed to be headed in the wrong direction. She supported Sir Nigel Rodley's proposal that the Committee should officially dissociate itself from the preliminary points of agreement. Mr. Amor, as the Committee's representative, should be mandated to express that position. Indeed, there had been many other working groups that could not reach agreement following their first meeting and hence could not produce a report. For example, that had happened with the working group on the judicial application of economic, social and cultural rights.

56. While agreeing with Mr. O'Flaherty on the usefulness of an institutional relationship between the Council and the Committee, she said it was premature to determine what that relationship would be, given that the Council had not yet decided on the role of special procedures mandate-holders and other subsidiary organs.

57. **Ms. Wedgwood** shared the concerns raised by Mr. Amor and others. The Committee did not control the printing press and yet the document that had been released by the working group appeared to have official status. In the meantime, not much was known about the Committee's communications of dissent. Strong action was therefore needed to stem the tide that had been created by the proposal of the Committee on the Elimination of Racial Discrimination. Moreover, the Council was on thin ice because it could hardly agree on anything, including the reports on Darfur. It was time to plead with the High Commissioner to direct her efforts towards convincing the Council to adopt treaty body recommendations — which were apolitical in nature — as the basis for universal periodic review.

58. **Mr. Schmidt** (Team Leader, Petitions Unit), clarifying the points raised by Mr. O'Flaherty and Ms. Motoc, said that the High Commissioner would probably not insist on pursuing the proposals she had prepared and circulated in her concept paper the previous year, because she knew that the concept was politically unattainable. She herself had admitted as much at meetings with representatives of the regional groups, the donor community and staff in her office and the United Nations Office at Geneva. Even if there was no agreement on a single body, she was pleased to note the ongoing discussions on the harmonization of working methods of treaty bodies to make them more predictable and manageable, ultimately reducing their

reporting burden, and it was for the best that she had not formally withdrawn her proposal.

59. With regard to relations between the Council and treaty bodies, the facilitators of the Council's six working groups had all updated and tabled revised concept and discussion papers, including the revised concept paper on universal periodic review. The linkage between universal periodic review and treaty body procedures had been framed in negative terms, with reference to the need "to avoid at all possible costs" duplication between universal periodic review and the procedures or concluding observations of the treaty bodies. Nevertheless, the debate showed that treaty body outputs and the recommendations of special rapporteurs would ultimately form the basis for consideration of universal periodic review.

60. With regard to working methods, he said that the Human Rights Committee's 2004 decision to consider treating a State party's responses to the list of issues as its next periodic report had been mentioned in most treaty body reform discussions and had been welcomed as a very positive step. It would be up to the Committee to implement that decision.

61. **Ms. Chanet** agreed with Ms. Wedgwood that the problem with the working group's report was that it was being circulated as an official United Nations document, even though it did not reflect the position of all the members of the working group. The challenge for Mr. Amor would now be to ensure that his written objections to the report were transformed into an official United Nations document. As suggested by Sir Nigel Rodley, maybe it should not be left up to the secretariat to draft such a document. However, if it did, then there should be some way of allowing committees to express their objections officially.

62. **Mr. Amor** said that the proposal by the Committee on the Elimination of Racial Discrimination was merely a suggestion made by the representative of that Committee which had been severely criticized and that he himself had rejected it outright. With regard to the coordination body, Mr. Doek, Chairperson of the Committee on the Rights of the Child, had agreed to prepare and present an oral report, not an official document. He himself, as representative of the Human Rights Committee, had also been asked to make an oral presentation on communication procedures. His position was that the Committee was governed by texts that had to be respected, but that it should also consider anything that could help improve harmonization, such as the recording of communications and strengthening of the Secretariat or even discussion on the Committee's perception of preliminary measures. With regard to communication, he saw very few problems apart from the disagreement that had already been raised. He was open to any good ideas that would enhance monitoring, for example.

63. The only problem of substance was that of reservations but he would welcome any suggestions, perhaps along the lines of general comment No. 24, which would allow colleagues to benefit from the Committee's experience. To his knowledge, there was no subgroup charged with studying the proposal of the Committee on the Elimination of Racial Discrimination. He confirmed Mr. Schmidt's assertion that the Human Rights Commissioner would not insist on pursuing her proposal, because she had paid a short visit to the working group and, as he understood it, had indicated clearly that there would not be any single body.

64. As for the intergovernmental conference for the review of the proposed single organ, Mr. Schmidt had provided the appropriate response. With regard to the relationship with the Human Rights Council, many things had been said, some of which had been completely unsubstantiated. The working group had been tasked with providing information, which it had delivered in its final observations. While it was true that the working group's report did not reflect the disagreement between the treaty bodies, the person who had drafted the report, Ms. O'Connor, had done her very best under very difficult circumstances. The report would be presented after the second meeting of the working group and it would be replaced if a suitable formula could be found.

65. On the Committee's perception of the report, he said that he had indicated clearly to the working group that the report did not reflect the Committee's position. With regard to relations with the Council, the Committee was a treaty body and would carry out its mandate until such time as it was modified by the States. He welcomed the comments and explanations provided by the secretariat regarding the single body. He felt that harmonization would be possible with regard to the reports and communications if it made sense.

66. **Ms. Wedgwood** said that it was difficult to distinguish between public and private documents in the United Nations system. She wondered whether the Committee's principled and reasoned position could be published in a document having the same status as the one that was being circulated.

67. **Sir Nigel Rodley** proposed the following text which the Committee could use as the basis for a formal decision: "On the basis of the report of its representative to the working group, the Human Rights Committee concludes that the preliminary points of agreement have no status; in particular the Human Rights Committee does not accept the establishment of a 'small group' for a unified body for communications; it agrees to participate in the next meeting of the working group on the understanding that it will discuss substantive areas of harmonization of procedures, including communications procedures; it instructs its representative to explain and adhere to this decision in the next meeting of the working group; it requests that this decision be included in its own annual report and in the next report of the working group." The ideas and wording could be discussed, but a formal document was necessary to strengthen the hands of the Committee's representative.

68. **Mr. Amor** said that, on closer examination, the proposal by the Committee on the Elimination of Racial Discrimination could not survive and that it did not deserve all the attention it seemed to be receiving. He agreed that the position of the Human Rights Committee should be made public, but felt that the document prepared for that purpose should refer to both the working group report and the report he had issued as its representative, in order to avoid any confusion.

69. **Ms. Motoc** agreed with the proposal for a formal document. In future, if the working group report did not reflect the Committee's position, it should not be adopted. Given the atmosphere in the Council as described by Mr. Schmidt, the Committee's language and actions had to be more direct and not very diplomatic.

70. **Mr. O'Flaherty** said that he did not support a formal decision. The Committee's approach to reform had always been moderate and sensible, making it the leading treaty body for reform. A formal decision expressed in negative terms would look more like an attempt to block action. He agreed with Mr. Amor that the idea should not be given so much importance and that it would die in due course. If the Committee absolutely wanted a decision, then it should emphasize some positive aspects instead of just dwelling on the negative aspects.

71. **Mr. Pérez Sánchez-Cerro** said that the Committee's objection was based not just on the form, in that the secretariat was wrong to have attributed the preliminary points of agreement as a fait accompli to all the committees, but also on the substance. He had not heard any comments from any Committee member in favour of the reform outlined by the High Commissioner. He favoured adopting the document proposed by Sir Nigel Rodley — which should also reflect the report that had been prepared by Mr. Amor, forwarding it to the representatives of all the committees and presenting it at the next meeting.

72. **Sir Nigel Rodley** said that since some of the criticisms being expressed showed that his proposed text had been misunderstood, he would rewrite it and circulate it for consideration. His main bone of contention was with paragraph 26 on the establishment of a small group to examine the substantive elements of a proposal for the creation of a unified body of communications. He was not taking issue with the High Commissioner, but with a document that seemed to reflect agreement in a situation where there was none. He was therefore prepared to propose a gracious but firm text for consideration to reflect the Committee's position.

73. **Ms. Chanet** said that it was important to present the Committee's position on the proposed single body in an official, public document bearing a United Nations masthead and symbol. The document should reflect the Committee's proposals for the discussion on communications and should be drafted in positive terms with regard to the coordination that should take place between treaty bodies.

74. **Mr. O'Flaherty** said that he simply wanted a document that allowed the Committee to make a solid contribution to the reform discussion and to reaffirm it leadership position.

75. **The Chairperson**, summing up the discussion, said that there was general agreement for the Committee to consider producing a document that reflected its position. On behalf of the Committee, Sir Nigel Rodley would prepare a text that could include some positive elements and should cover much

more than just paragraph 26. He agreed that a small group could be tasked with producing a document that expressed support for reform but also established the Committee's dissenting position very clearly.

76. **Sir Nigel Rodley** said that there was no need for a new communication because there was already a text in English that could form the basis for the discussion, and that could be prepared in a closed meeting.

77. **Mr. Schmidt** (Human Rights Committee Secretariat) confirmed that there were texts for two communications in the official languages of the Committee.

*The meeting rose at 5.30 p.m.*