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Twelfth session

SUMMARY RECORD OF THE 275th MEETING

Held at Headquarters, New York,
on Wednesday, 1 April 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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Covenant (continued)

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The meeting was called to order at 11 a.m.

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

1. The CHAIRMAN invited the Committee to turn its attention to that aspect of the consideration of reports which had been referred to as "follow-up" and to review the draft statement on the Committee's work under article 40 of the Covenant adopted by consensus at the eleventh session following informal consultations. The text of the draft statement appeared in paragraph 1 of the summary record of the 260th meeting, subject to the amendments to paragraph (f) indicated in paragraph 21 of that record. It was an agreed statement that was to serve as the basis for consideration by the Committee of its future work in implementation of article 40 of the Covenant. He suggested that the Committee should examine that text and consider the decisions called for in the various paragraphs, particularly paragraphs (i) and (j).

The meeting was suspended at 11.10 a.m. and resumed at 11.30 a.m.

2. Mr. BOUZIRI pointed out that paragraphs 370 to 383 of the Committee's last report to the General Assembly (A/35/40) provided background information which was useful for an understanding of the history of the matter under consideration.

3. Mr. DIEYE said it was essential to review and explain the very complex history of the subject; otherwise, new members in particular could not hope to understand or be able to evaluate what was before them or how the Committee should proceed in the matter. The record of the 260th meeting did not reflect, for instance, the fact that the beginning of a consensus had emerged in the Committee at the tenth session.

4. Mr. OPSAHL said that he had been a member of the small working group appointed at the end of the tenth session to work on the matter, once it had become apparent that there were two very divergent trends of opinion in the Committee on the subject. The draft statement adopted at the 260th meeting was a compromise text prepared by the working group in order to find some common ground and reach some consensus on the matter.

5. By its eleventh session, the Committee had considered 36 initial reports of States parties, that being the major component of its work, since the work relating to the Optional Protocol involved only a small number of States parties. Furthermore, eight States parties had provided additional written information on the basis of which a second round of examination had taken place. It was not clear - or at least there were varying opinions on the subject - how the Committee should now proceed in the consideration of reports of States parties. Part of the problem lay in the interpretation of article 40 of the Covenant, particularly paragraph 4. The draft statement contained in the summary record of the 260th meeting represented the consensus reached at the eleventh session, and he hoped that the consensus could be maintained; however, the matter needed further

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consideration, especially in view of the presence of new members in the Committee. He did not believe that a final text could be adopted at the current session in the absence of some members, but it would nevertheless be valuable to continue the discussion.

6. The consensus opened the way for a more methodical approach to the study of reports of States parties, the periodicity of those reports, and the formulation of general comments by the Committee in accordance with certain guidelines. The summary record was certainly a correct reflection of what had taken place at the 260th meeting, but the text as shown there was different in certain technical, but not substantive, aspects from that finally adopted. In discussing paragraph (a) the Committee had had several examples before it, which needed to be borne in mind. Furthermore, in preparing views for submission to the Committee at its next session, any working group that might be established should take account of the principles set forth in paragraphs (b) and (c). An attempt should also be made before the next session to review the guidelines for the preparation of initial reports referred to in paragraph (e), and consideration should be given to whether the Committee should, at that session, take the decisions announced in principle in paragraph (f). Whatever decisions were taken with respect to that paragraph should be made known to States parties, as should any guidelines that were worked out for new reports pursuant to paragraph (g).

7. The list of questions requested in paragraph (h) had been made available, and a working group might be needed to review it. He presumed that the questions had been taken from the summary records, which, although excellent, were not drawn up by lawyers. The questions therefore lacked a certain legal touch, and it might be necessary to reword them when drawing up the final questionnaire.

8. A decision had been taken (paragraph (i)) to establish a working group of three members to prepare for the consideration of second periodic reports. That was a step in the right direction, which should be taken as soon as the occasion arose - for instance, in connexion with the consideration of the supplementary report of Norway. If that was to be done, the working group would have to be established at the current session.

9. With respect to the analyses of reports requested of the Secretariat, he recalled the interpretation of paragraph (j) given by the Director of the Division of Human Rights (CCPR/C/SR.260, para. 26) but wondered whether anything had yet been done to implement the decision. In his view, such analyses should be prepared at least for the reports of Barbados and Kenya, and also perhaps for those considered at the eleventh session.

10. The CHAIRMAN suggested that the final version of the draft statement contained in the summary record of the 260th meeting should appear in the Committee's report to the General Assembly at its thirty-sixth session; the Rapporteur would consult members to ensure that it was accurate.

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(The Chairman)

11. As for the observations made by Mr. Bouziri and Mr. Dieye, the consensus had been reached without prejudice to the right of any member of the Committee to raise any other matter, and in the light of the two sharply divided points of view. He suggested that it might be better to defer consideration of paragraphs (b) and (c) so as to give new members time to read the material contained in previous reports of the Committee.

12. Mr. GRAEFRATH, supplementing the comments made by Mr. Opsahl, said that the consensus was based on support for the position that the general comments should refer to States parties in general rather than individual States, but did not exclude further consideration of the interpretation of article 40, paragraph 4, of the Covenant. The original idea behind paragraph (f) of the consensus had been that the four-year period should run from the time of the last discussion held with each State party on the subject of its initial or supplementary report. However, there had been difficulty in reaching agreement, which accounted for the deletion referred to in paragraph 21 of the summary record. It would be noted that the last sentence of paragraph (f) stated that supplementary reports "may" be considered to be second periodic reports, and not that they "should" be so considered. Some members had felt that, since it was the total inadequacy of certain initial reports which had led the Committee to request supplementary reports, the latter should in fact be treated as initial reports. With regard to paragraph (h), he felt that more work was needed on the list of questions.

13. Mr. ERMACORA said that, inasmuch as the new members of the Committee were apparently bound by the consensus reached at the preceding session, he regretted that neither Mr. Opsahl nor Mr. Graefrath had responded to the points raised by Mr. Bouziri and Mr. Dieye. The Committee had dealt with the problem of general comments in paragraphs 370 to 383 of its last report to the General Assembly (A/35/40), and the results of the working group's efforts appeared in the summary record of the 260th meeting. The General Assembly's approach to the matter should also be taken into account. As he saw it, the general comments should be directed, first, to the specific reports of States parties and, secondly, to the development of uniform standards in the implementation of the provisions of the Covenant - a useful formulation that was to be found in General Assembly resolution 35/132, paragraph 8.

14. Mr. GRAEFRATH said he believed that Mr. Opsahl had answered the points made by Mr. Bouziri and Mr. Dieye when he had drawn attention to the two distinct schools of thought whose views were reflected in the relevant section of the Committee's report (A/35/40) and had pointed out that the text adopted at the 260th meeting was a compromise between those two positions.

15. The CHAIRMAN added that the compromise had been the outcome of protracted discussions of the original text produced by the working group.

16. Mr. LALLAH said that the Committee should consider first of all how best to make progress towards the adoption of guidelines for the formulation of general comments.

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17. Mr. PRADO VALLEJO said that he had no problem with the procedures that had been followed in reaching a consensus at the preceding session on the basis of the working group's draft and lengthy discussions in the Committee. Obviously, not every aspect of such a compromise agreement would be acceptable to every member. However, there were a number of substantive points which the Committee should settle first; for instance, it should decide whether or not to request the submission of second periodic reports and whether or not to prepare the general comments provided for under article 40, paragraph 4, of the Covenant. The new members were certainly not precluded from proposing amendments to the text, but at least those basic decisions should be taken immediately.

18. Mr. SADI said that there had been no intention of pre-empting the position of new members. However, the Committee had considered that after four years the time had come to formulate some guidelines; otherwise, with the membership of the Committee changing every two years, it would be totally immobilized. While he had no wish to destroy the consensus, his personal interpretation of paragraph (b) was that the general comments should be addressed to all States parties, as well as to specific States in connexion with their particular reports. Despite the adoption of a compromise text, the divergent interpretations still had to be reconciled.

19. Mr. TOMUSCHAT said he too was of the opinion that paragraph (b) as it stood was not at all clear. The Committee must decide whether it could confine itself to general comments or whether it was required to make specific references to specific States. He therefore thought that a working group should be established and that each member of the Committee should be prepared to express his views. His own opinion was that, if misinterpretation was to be avoided, it was imperative to indicate clearly what the Committee's position was on specific reports.

20. In general, there were a number of issues which members would agree were critical and on which the Committee was compelled to speak out. All members should make an effort to identify such issues and the Committee, after establishing that there was general agreement, should not hesitate to make its views known.

21. Sir Vincent EVANS, referring to the status of the consensus reached at the preceding session, expressed the hope that all members of the Committee could agree to proceed on the basis of that text, bearing in mind that it simply indicated a way in which the Committee might advance with regard to its procedure under article 40 of the Covenant. The best way to approach the question of general comments would be to start with comments relating to States generally or to the implementation of the Covenant, although such a general approach need not preclude the mention of specific examples. Only at a later stage should the Committee proceed to draft comments on specific States. Nevertheless, it was very important that the Secretariat should be asked to begin work immediately on the analyses referred to in paragraph (j) of the consensus, which should not be confined to the reports considered at the current session and the preceding session but should also cover earlier reports.

22. As for the second stage in the consideration of reports of States parties, namely, the request for additional information and the response from the State

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(Sir Vincent Evans)

party, he believed that the process should be seen as a continuing dialogue on the basis of that information and that the Committee should proceed to it as soon as possible. For example, he suggested that the Committee should envisage such a second stage in the case of Norway at the coming session in July. At that session, a working group of three members might meet immediately before the relevant meetings to identify those points which could most profitably be raised. He envisaged the second stage as being more in the nature of an exchange of views with the State party concerned.

23. On the question of the revision of the guidelines already adopted for the preparation of initial reports and the production of guidelines for the submission of second and possibly subsequent reports, he agreed with Mr. Opsahl that a number of the questions included in the list of those most frequently asked would perhaps not be clear to the States parties as formulated. He suggested that a working group should be established to revise the guidelines for initial reports and to begin the preparation of guidelines for subsequent reports. In his experience, preliminary drafts were best prepared by a single rapporteur, and he therefore suggested that members should transmit their suggestions to a chosen rapporteur who would prepare a draft before the next session, when it could be usefully considered by a working group.

24. Mr. TARNOPOLSKY agreed with Sir Vincent Evans that the Committee had not yet reached the stage of making specific comments on the reports of specific States but should confine itself for the time being to comments of a general nature. At the same time, the establishment at the coming session of at least one working group, perhaps in the form referred to in paragraph (i) of the consensus, would advance the work of the Committee. The supplementary report of Norway would provide an opportunity to proceed as envisaged in that paragraph. Further clarification was required in connexion with the analyses of the study of reports referred to in paragraph (j), which, if they were to be of use, would be needed before the second stage referred to in paragraph (i). A practical solution for the present would be for a working group to meet before the next session, in accordance with paragraph (i), to consider the supplementary report of Norway, and also to prepare drafts on the basis of suggestions concerning paragraphs (b) and (c). In his opinion, it was preferable for a working group, rather than a single individual, to undertake that task.

25. It was important that steps should be taken before the next session to request reports in accordance with paragraph (f). He for one was not prepared to consider a first report of, say, six pages or less to be a substantial initial report, and he urged the Committee to resolve the issue by taking a decision on which reports might be considered substantial.

26. Mr. OPSAHL urged members not to reopen the discussion on paragraphs (b) and (c) in particular, but to proceed to their implementation. He drew attention to paragraph (a), which constituted a clear decision to start to formulate general comments.

The meeting rose at 1 p.m.