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SUMMARY RECORD OF THE 306th MEETING
held at the Palais des Nations, Geneva,
on Friday, 24 July 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 10.55 a.m.

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

Guidelines regarding the form and contents of reports from States parties
under article 40 (1) (b), of the Covenant

Draft text submitted by Sir Vincent Evans

1. The CHAIRMAN reminded the Committee that paragraph (g) of the consensus of October 1980 contained a summary of the guidelines which Sir Vincent Evans had been instructed to elaborate and which were now before the Committee.

2. The text of the document proposed by Sir Vincent Evans was as follows:

"1. Under article 40 (1) of the Covenant every State party has undertaken to submit reports to the Human Rights Committee on the implementation of the Covenant -

(a) within one year of the entry into force of the Covenant for the State party concerned,

(b) thereafter whenever the Committee so requests.

"2. At its second session in August 1977, the Committee adopted general guidelines for the submission of reports by States parties under article 40 (see annex IV of the report of the Human Rights Committee, A/32/44). In drawing up these guidelines the Committee had in mind particularly the initial reports to be submitted by States parties under article 40 (1) (a). These guidelines have been followed by the great majority of States parties which have submitted reports subsequently to their issue and they have proved helpful both to the reporting States and to the Committee.

"3. In paragraph 5 of those guidelines the Committee indicated that it intended, after the completion of its study of each State's initial report and of any subsequent information submitted, to call for subsequent reports under article 40 (1) (b), of the Covenant.

"4. At its eleventh session in October 1980, the Committee adopted by consensus a statement concerning the next stages of its future work under article 40 (see CCPR/C/SR.260). It confirmed its aim of engaging in a constructive dialogue with each reporting State and determined that the dialogue should be conducted on the basis of periodical reports from States parties to the Covenant (paragraph (g)). It also decided that, in the light of its experience in the consideration of initial reports, it should develop guidelines for the purpose of subsequent reports. Pursuant to this decision and to the decision taken by the Committee to request States parties to submit reports under article 40 (1) (b), on a periodical basis, the Committee has drawn up the following guidelines regarding the form and contents of such reports.

"5. The aim of reports submitted under article 40 (1) (b) will be to complete the information required by the Committee under the Covenant and to bring it up to date. As in the case of initial reports (see the general guidelines referred to in paragraph 2 above), subsequent reports should be in two parts as follows:

Part I: General

This part should contain information concerning the general framework within which the civil and political rights recognized by the Covenant are protected in the reporting State.

Part II: Information in relation to each of the articles in Parts I, II and III of the Covenant

This part should contain information in relation to each of the provisions of individual articles.

Under these two main headings the contents of the reports should concentrate mainly on --

(a) the completion of the information before the Committee as to the measures adopted to give effect to rights recognized in the Covenant, taking account of questions raised in the Committee on the examination of any previous report and including in particular additional information as to questions not previously answered or not fully answered;

(b) information taking into account general comments which the Committee may have made under article 40 (4) of the Covenant;

(c) changes made or proposed to be made in the laws and practices relevant to the Covenant;

(d) action taken as a result of experience gained in co-operation with the Committee;

(e) factors affecting and difficulties experienced in the implementation of the Covenant;

(f) the progress made since the last report in the enjoyment of rights recognized in the Covenant.

"6. The Committee is very appreciative of the way in which States parties have co-operated with it in the exercise of its important functions under article 40. It is the desire of the Committee to assist States parties in promoting the enjoyment of rights under the Covenant and to provide a forum in which they may learn from each others' experience. To these ends, the Committee wishes to continue the dialogue which it has begun with each reporting State in the most constructive manner possible, and reiterates its confidence that it will thereby contribute to mutual understanding and peaceful and friendly relations among nations, in accordance with the Charter of the United Nations."

3. Mr. BOUZIRI said he had thought the Committee would continue its consideration of the general comments before taking up the guidelines and observed that he had not had much time to study Sir Vincent Evan's draft. He wished to draw attention to an important matter, the fact that on several occasions during the consideration of reports from very different countries, the representatives of the countries concerned had not replied to questions put to them. States might perhaps rely on their sovereignty in order to avoid answering questions which were put to them twice or three times, but to do so seemed inconsistent with the Covenant. If they had difficulties, they should so inform the Committee. Did Sir Vincent Evans's paper take that situation into account? States parties should be told that relations between themselves, and the Committee must be based on mutual confidence and that the dialogue must be frank and embrace all questions raised in the Committee. He himself had always been frank in discussing reports and he expected the same from the representatives of States, since the Committee would not otherwise be able to advance in its work.
4. The CHAIRMAN said that he had invited the Committee to begin by considering the general guidelines because he hoped all members would be present when it resumed its consideration of the general comments.
5. Sir Vincent EVANS, referring to his draft general guidelines, said that, as the members would remember, guidelines applicable to the form and contents of the initial reports of States parties had been adopted by the Committee at its second session (Annex IV of document A/32/44). The Committee should perhaps have explained on that occasion that the directives refer to initial reports by States. At the present stage, it was necessary to adopt general guidelines to advise States parties about the form and contents of subsequent reports submitted under article 40 (1) (b) of the Covenant.
6. In the light of those considerations, he had first of all drawn attention in the draft to the commitments undertaken under article 40 (1) (b) and, after explaining the justification for the guidelines, had referred to paragraph (d) of the consensus of October 1960, which explained the purpose of the guidelines. The paragraphs which followed dealt with the form and contents of subsequent reports which should in general follow the pattern of the initial reports taking into account paragraph (g) of the consensus. The document concluded with an appeal to States parties for their co-operation.
7. Mr. PRADO VALLEJO said that he had the impression that the draft was constructive. He wondered, however, why the Committee continued to give instructions to States parties although it had not yet implemented article 40 (4). The Committee was tackling its business in the wrong order and should instead be formulating its comments on each of the reports already submitted to it. In paragraph 5 of the draft there was a reference to "general comments". Where were they? As yet, the Committee had made no general comments. The formulation of the comments was in abeyance and should perhaps be dealt with before moving on to other questions.
8. Mr. DIEYE shared Mr. Prado Vallejo's view. At the 304th meeting, he had observed that the Committee was moving ahead too quickly in its work and was passing over important issues. He had no objection to the adoption of Sir Vincent Evans's draft, but thought that the first priority should be to address specific comments to States parties.

9. Paragraph 6 of the proposed text was too general. The first sentence seemed to award a good mark to all States. It was not his impression that all States had co-operated with the Committee. It would be better to say that "The Committee appreciates the way in which some States parties...". The second sentence expressed a passive view of the Committee's work. It was merely to be a forum for discussion. The Committee was in fact required to give its views on the reports by States and to assess the way in which they were implementing the provisions of the Covenant. If it did not do so, it would not be carrying out its terms of reference. The last sentence of paragraph 6 was unfair, in view of the want of co-operation on the part of certain States, and should speak of continuing the dialogue with some States and seek to encourage others to co-operate with the Committee.

10. He added that the last two lines of subparagraph (a) should be more specific. Some States made no response to questions and gave the impression of not having heard them. What the Committee needed was an assessment of the reports and the responses of States to the Committee's questions. In the absence of such an assessment States parties could claim that the reports they submitted had been favourably received by the Committee. The claim could not be challenged so long as the Committee had expressed no opinion on the value of the reports. If the Committee's questions went unanswered, the State party should be so informed and the Committee could only do so by means of an assessment.

11. The Committee should proceed gradually, by stages and ascertain the contents of reports by States parties before making general comments.

12. Mr. LALLAH said that it was difficult to speak of general guidelines without speaking of general comments. He invited members to compare the various elements in paragraph 5 of Sir Vincent Evans's draft with the various points mentioned in paragraph (g) of the draft declaration adopted at the Committee's 260th meeting. In his view subparagraph (a) of Sir Vincent Evans's draft met Mr. Bouziri's concerns to some extent. At the 303rd meeting, when the draft decision on periodicity had been under consideration, Sir Vincent Evans and Mr. Tomuschat had stressed the obligation of States parties to submit detailed reports to the Committee and to reply to questions put to them. He endorsed that view. When the Committee concluded its consideration of a report the Chairman usually invited the representative of the State concerned to reply immediately or at a later stage to the questions of members of the Committee, but that statement did not mean that the Chairman was releasing the State party from its obligation to reply. He would return if necessary to the question of the interpretation of article 40 when the Committee took up the question of general comments. In his view, Sir Vincent Evans had provided a good guide to the matters to be included in subsequent reports. The draft was he thought acceptable, particularly in the light of the Committee's decision on periodicity.

13. The CHAIRMAN commented that the object of the discussion was to define the form and contents of reports by State parties and that the document should not therefore create difficulties, unlike the question of general comments which was a more ticklish problem, which the Committee should take up without delay.

14. Mr. SADI said that the draft was a constructive effort to describe the form and contents of subsequent reports submitted under article 40(1)(b). He was prepared to accept the document, with perhaps a few minor changes reflecting somewhat deeper concerns. In Part I of paragraph 5, the words "and political" should be inserted after "general", since although legislation by States generally tended to protect human rights, the protection of those rights was not always guaranteed in practice. In subparagraph (a), stress should be laid on the fact that members of the Committee worked collectively rather than individually. A question not raised by several members should perhaps not be stressed. He therefore proposed to say "common questions not answered". He suggested the insertion of "detailed" before "information" in subparagraph (b) to prevent States from transmitting information so general that it was of no use to the Committee. In subparagraph (c) it should be emphasized that what was needed were the "latest changes", namely changes adopted since the initial report to the Committee. The phrase "as a consequence of co-operation with the Committee" should be inserted at the end of the subparagraph. Subparagraphs (c), (d) and (f) might be merged as they served essentially the same purpose. Subparagraph (e) should speak of "persistent difficulties". With regard to subparagraph (f), States parties should also be asked to indicate draft legislation related to the Covenant which they intended to adopt in the future. He thought that the document could well be adopted during the current session.

15. Mr. OPSAHL regretted that the Committee was not in a position to fulfil its obligations under article 40 of the Covenant, but thought that it was none the less advisable to consider the draft general guidelines for States parties, which it should be possible to adopt quickly. He did not agree with some of Mr. Sadi's amendments and would like, subject to the Committee's adoption of the draft general comments (CCPR/C/XIII/CRP.2), to insert paragraph 2(3) of that draft at the end of paragraph 5 of the general guidelines in order to strengthen what was a highly abstract text.

16. Mr. ERMACORA commented that given the procedure for the election of members it was inevitable that the Committee should embark on general discussions since the many newly elected members did not necessarily consider themselves bound by decisions taken before their election.

17. Referring to Sir Vincent Evan's draft general guidelines he said that he, too, believed that the general information to be included in subsequent reports of the States parties should not be limited to the "legal framework" (paragraph 5, Part I: General). In the same sentence the words "as contained in the Covenant" should be inserted after "civil and political rights", since the Covenant did not cover all such rights.

18. As far as the second part of subsequent reports was concerned, he did not think it necessary to stipulate in subparagraph (a), as Mr. Sadi had requested, that the questions must have been put jointly by the members of the Committee. In that event, it would be necessary to change the system adopted by the Committee for the questioning of countries submitting reports, by, for example, making provision for preparatory consideration in the course of which members would decide on the questions to be asked subsequently on their behalf by the Chairman, which was the procedure followed by the European Commission of Human Rights, among others.

19. As Mr. Dieye had pointed out, subparagraph (b) was linked with the general comments. Subparagraph (c) could be combined with subparagraph (f), since it concerned changes made in national laws and practices since the publication of the preceding report. It would be preferable to replace subparagraph (e) with the wording used in rule 66 of the Committee's rules of procedure, so as to avoid the possibility of conflicting interpretations. In addition, it would be as well to stipulate in that paragraph that it was the practice of the Committee to put oral questions to the representatives of States parties, who should answer them in the same way.

20. Finally, paragraph 6 of the draft should be entirely recast to avoid giving the impression that the Committee was a sort of advisory service, or had technical assistance functions, whereas in fact its activities were based on legally binding instruments, with all the consequences that that entailed. Obviously, the Committee must take care to ensure that States parties answered all questions put to them and, in that regard, it would be as well to recall, in paragraph 6, the terms of rule 70(3), of the Committee's rules of procedure.

21. Mr. MOVCHAN recalled that the decision of 30 October 1980 had been adopted by consensus and that, in accordance with the Committee's rules of procedure, it must be respected by all members, whether or not they had been present at that time. All the comments made at the preceding and current meetings had related to article 40(4) of the Covenant, the interpretation of which had always presented difficulties, although the decision of 30 October 1980 had been taken "without prejudice to the further consideration of the Committee's duties under article 40(4) of the Covenant". If the Committee had wished to consider that article, it should have included it in its agenda. For the time being, it must confine itself to consideration of the results of the deliberations of the Working Group, without taking up consideration of article 40(4), thus abiding by its own decision.

22. The draft general guidelines were generally acceptable, but he had some comments to make on the amendments proposed by earlier speakers and to suggest a number of changes of his own.

23. In the first sentence of paragraph 5, the words "in implementation of the provisions of the Covenant" might be inserted after the words "the information required by the Committee". In the same paragraph, in connection with Part I of the subsequent reports requested of States parties, the words "the general legal framework" could be replaced by "the general legal and social framework", since many of the countries concerned had different socio-political systems. Similarly, the words "as contained in the Covenant" could be inserted after "civil and political rights", as proposed by Mr. Ermacora. He noted that subparagraph (a) rightly reiterated the pertinent provisions of paragraph (g) of the decision of 30 October 1980. He left the Committee to decide whether the word "detailed" should be inserted before the word "information" in subparagraph (b), since the proposed wording was that contained in the decision. He had no objection to the proposal to use the phraseology of rule 66 of the Committee's rules of procedure in subparagraph (e). In paragraph 6 of the draft, it might be advisable to delete the first sentence and to retain the remainder of the text.

24. The draft was, he believed, wholly consistent with the consensus of 30 October 1980. He thanked the drafter for having included the last sentence, since, in his view, respect for human rights was certainly a factor in the maintenance of peace.

25. Mr. HANGA said that like other members he had noted that the representatives of States parties had sometimes failed to answer questions and that the information given had sometimes been incomplete because the State party concerned had had great difficulty in implementing the Covenant. For that reason, he would like to establish a link between subparagraph (a) of the draft, in which States parties were requested to complete the information before the Committee as to the measures adopted to give effect to the Covenant, and subparagraph (e), in which they were requested to describe difficulties experienced in implementing the Covenant. An account of difficulties experienced by a given State in implementing the Covenant would give members a clear picture of the reasons why the information given was not always complete.

26. The representatives of States parties had been asked to reply to questions put jointly by the members of the Committee because the Committee worked as a united body. However, there were occasions when questions asked by an individual member of the Committee were of very great importance, such as those which Sir Vincent Evans had once asked concerning de facto unions, namely, unions other than marriage. In that instance, it had been useful to know what was the position of the State party and what were the religious consequences arising from the existence of de facto unions.

27. He agreed with those members who had pointed out that there were two Covenants and that States parties were not obliged to answer questions concerning the International Covenant on Economic, Social and Cultural Rights. Nevertheless, it should be recognized that there were close links between that Covenant and the one with which the Committee was concerned, and that it was sometimes impossible to understand certain provisions in the civil and political field (superstructure) without having at least a superficial knowledge of economic conditions (infrastructure).

28. Like Sir Vincent Evans, he considered that States parties had co-operated with the Committee. The noticeable improvement in reports as a result of the guidelines addressed to States by the Committee was sufficient proof of that fact. The first sentence of paragraph 6 of the draft was therefore fully justified. Commenting on suggestions that the Committee should evaluate the manner in which States parties gave effect to the Covenant, he pointed out that the Committee was concerned with conciliation rather than with passing judgement. It could make judgements of fact, but not value judgements, which meant that it could do no more than state whether the situation in a given State party was in conformity with the Covenant.

29. Mr. TARNOPOLSKY said that he regretted the tendency of members of the Committee to engage in interminable discussions and to make general observations on any topic, including "general comments", instead of making specific proposals for the improvement of texts under consideration. Those members who wished to make drafting changes could propose them to the author of the draft before the Committee. The comments which counted were those relating to substance, of which he had heard only one, which concerned the possibility of replacing the words "questions raised in the Committee" in paragraph 5 (a) by "questions raised by the Committee". Past experience of the Committee's work should have taught the member who had made that proposal that if the Committee was to ask questions as a united body it would never

ask any since its members were incapable of agreeing on the questions to be asked. Consequently, the Committee should keep to its present practice. He himself had no intention of allowing the Committee to dictate the questions he was to put to the representatives of States parties. Like Mr. Dieye and Mr. Ermacora, he believed that the Committee should not become an advisory body. The time would come for the Committee to evaluate the manner in which States parties gave effect to the Covenant. In the meantime, it was important to draw up guidelines for States parties regarding the form and content of the reports they were required to submit. None of the statements he had heard had convinced him of the need to change anything in the text before the Committee, except to delete the adjectives "political, social and economic" qualifying the expression "general legal framework" in paragraph 5. Perhaps paragraph 6 should be placed nearer the beginning of the text. He would not press his suggestions. He would prefer the Committee to adopt the draft before the end of the meeting.

30. Mr. TOMUSCHAT proposed that, in paragraph 5 of the text before the Committee, the words "paragraph by paragraph and sentence by sentence, as appropriate" should be inserted after the words "the provisions of individual articles", since the quality of the information supplied would be improved, if States, instead of presenting their information in bulk form, followed the order of the articles and of the paragraphs and sentences of the articles.

31. If paragraph 6 was retained, the words "very" and "important" should be deleted and the words "States parties" should be replaced by "most States parties". The second sentence should be deleted, since the conception of the Committee's work expressed therein was not shared by all members. The last sentence of paragraph 6 should read simply: "The Committee wishes to continue the dialogue which it had begun with each reporting State in the most constructive manner possible". The Committee's task was to supervise the implementation of the Covenant, which could give rise to tensions. It would be better therefore to avoid any reference to Article 2 (7) of the United Nations Charter.

32. Mr. AGUILAR said that the beginning of paragraph 5 provided an excellent statement of the purpose of the new general guidelines but that the remainder of the paragraph outlining the two parts of subsequent reports to the Committee should be strengthened. The corresponding part of the original guidelines (CCPR/C/5) should be repeated in paragraph 5 of the new guidelines. It was important that the Committee should know, not only which human rights were protected by the constitution and legislation of the reporting State, but also how their provisions were implemented and whether an individual claiming that some of his rights had been abridged had access to effective remedies to ensure the protection of his rights in practice.

33. Referring to subparagraph (a), he said that States should not be limited to answering questions asked by the Committee as a whole. Each member of the Committee should be able to ask whatever questions he wished and to make any comment he felt necessary, even if it involved an evaluation of the manner in which the country submitting the report was implementing the Covenant.

34. Subparagraph (d) was simply one element in the whole covered by subparagraph (c) and the two subparagraphs could be combined. Similarly, subparagraph (f) seemed redundant in the light of subparagraph (d), since progress in the enjoyment of human rights was reflected in changes made in national laws and practices.

35. Despite Mr. Tomuschat's proposals concerning paragraph 6, he would prefer to delete the paragraph, since it was not essential and might create difficulties, whatever view was taken of the Committee's functions.

36. Mr. GRAEFRATH said that although there were differences of opinion regarding the procedure for the submission of reports under the Covenant and the obligations of States parties, the fact remained that the obligations of States parties resulted from the Covenant, and not from the Committee's rules of procedure or methods of work. States parties had undertaken to submit reports, not to comply with the Committee's guidelines. Although the Committee invited States parties to follow its guidelines, States parties were under no obligation to do so, any more than they were obliged to send a representative to the Committee to attend its meetings and answer questions. If it attempted to require States parties to attend its meetings and to answer questions, the Committee would be exceeding the powers conferred on it by its terms of reference. The Committee should be careful not to go too far and should endeavour to enlist the co-operation of States, without which its work was impossible.

37. He could accept most of the proposed amendments to the text under consideration, with the exception of the idea of questions being asked jointly and the suggestion to replace the words "in the Committee" in subparagraph (a) by "by the Committee". In paragraph 6, it would be preferable to delete the whole of the first sentence, while retaining the second and last sentences. Perhaps Sir Vincent Evans could prepare a new version of his draft guidelines taking into account the suggestions made by members of the Committee.

38. The CHAIRMAN said he believed the Committee was prepared to adopt Sir Vincent Evan's draft subject to the inclusion of a number of changes. He would be grateful if Sir Vincent would prepare a new draft, taking into account the suggestions of members. The amended text could be adopted later.

39. Mr. DIEYE noted that subparagraph (a) referred to, among other things, "questions ... not fully answered". Since the Committee did not make evaluations, how could it decide whether an answer was incomplete?

40. Mr. ERMACORA proposed that the words "including court practices" should be inserted after the word "practices" in subparagraph (c).

41. Mr. PRADO VALLEJO proposed that the words "up-to-date information on further difficulties experienced in the implementation of the Covenant" should be added to subparagraph (e), with the necessary consequential drafting changes.

42. The CHAIRMAN suggested that Sir Vincent Evans might wish to confer with Mr. Prado Vallejo and Mr. Aguilar.

43. Mr. DIEYE said that he could accept Mr. Tomuschat's proposed amendments to paragraph 6.

44. Mr. AL DOURI wondered whether, in paragraph 5 of the text, the use of the word "concentrate" might not lead the authors of reports to satisfy only the recommendations set out in subparagraphs (a) to (f).

45. The CHAIRMAN expressed the hope that Sir Vincent Evans would soon be in a position to present a revised version of the draft guidelines to the Committee.

The meeting rose at 1.10 p.m.