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SUMMARY RECORD OF THE 308th MEETING

Held at the Palais des Nations, Geneva
on Monday, 27 July 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.50 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT
(agenda item 3) (continued)

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

Draft submitted by Sir Vincent Evans (continued)

1. Sir Vincent EVANS read out paragraphs 5, 6 and 7 of his draft guidelines, as amended in accordance with suggestions made by members of the Committee. The words "under the Covenant" had been inserted after the word "Committee" in the first sentence of paragraph 5. The second subparagraph of paragraph 5 was worded as follows: "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". The third subparagraph was worded as follows: "This part should contain information in relation to each of the provisions of individual articles". Subparagraph (c) read as follows: "changes made or proposed to be made in the laws and practices relevant to the Covenant". Subparagraph (e) read as follows: "factors affecting and difficulties experienced in the implementation of the Covenant". The last sentence of paragraph 5 would read: "It should be noted that the reporting obligation extends not only to the relevant laws and other norms, but also to the practices of the courts and administrative organs of the State party and other relevant facts likely to show the degree of actual enjoyment of rights recognized by the Covenant".
2. The new paragraph 6 read as follows: "6. The report should be accompanied by copies of the principal legislative and other texts referred to in it".
3. Paragraph 7 read as follows: "It is the desire of the Committee to assist States parties in promoting the enjoyment of rights under the Covenant. To this end the Committee wishes to continue the dialogue which it has begun with reporting States 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".
4. Mr. DIEYE reminded members that he had proposed the deletion of what had become paragraph 7 of the draft guidelines because it did not accurately describe the Committee's work. While noting that the first sentence of former paragraph 6 and the second part of the second sentence had been deleted, he wondered whether the paragraph, as amended, was acceptable.
5. Mr. TOMUSCHAT proposed that the words "mutual understanding", the implication of which was unclear, should be deleted from the last paragraph of the draft guidelines.
6. Mr. BOUZIRI suggested that, in the first sentence of paragraph 4, the words "an initial stage of" should be inserted between the phrases "a statement concerning" and "future work" in order to clarify the situation for the future. Furthermore, paragraph 5 (d) appeared to be unnecessary and even to show a certain presumptuousness on the Committee's part.

7. Mr. MOVCHAN noted that the end of paragraph 7 was identical with the end of the last paragraph of the initial general guidelines (CCPR/C/5). If Mr. Tomushcat's proposal was adopted, and if the States parties compared the texts, they would see that the second one had been amended with respect to the first one and would wonder what that amendment meant. It would therefore be better to retain paragraph 7 as it had just been proposed by Sir Vincent Evans. He would also like Mr. Tomushcat to explain why he had difficulty in accepting the proposed text.
8. Sir Vincent EVANS proposed that the first sentence of paragraph 4 should be worded as follows: "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)".
9. Mr. BOUZIRI said that he accepted the wording proposed by Sir Vincent Evans for the first sentence of paragraph 4.
10. Sir Vincent EVANS said that paragraph 5 (d) had been included because it appeared in the text adopted by consensus in October 1980 (CCPR/C/SR.260). Furthermore, some States had already drawn the Committee's attention to the changes they had made in their legislation in the light of the observations made in the Committee during consideration of their reports. It would therefore be advisable to retain paragraph 5 (d).
11. The words "mutual understanding" in paragraph 7 of the proposed text should be retained, particularly since so much misunderstanding arose among States because of differences in their legal, political and social systems. Before criticizing or commenting on the measures adopted by a particular State, the Committee should try to understand why a State acted in a particular way.
12. Mr. LALLAH said that paragraph 5 (d) should be retained so as to obtain as much information as possible from the States parties, since the less information the Committee received, the more questions it would have to ask. Furthermore, it would be advisable for the members of the Committee to adopt the text under consideration as soon as possible because of the constraints involved in preparing the Committee's annual report.
13. Mr. OPSAHL said he would like to retain paragraph 5 (d) and in order to be consistent, the current wording of paragraph 7 as well.
14. Mr. ERMACORA said that experience showed that when human rights were violated, mutual understanding between States in no way helped to ensure their observance. Nevertheless, since the end of paragraph 7 already appeared in the initial general guidelines (CCPR/C/5, para. 6), it might as well be retained, even if it was superfluous.
15. Mr. BOUZIRI said he was prepared to accept paragraph 5 (d) and the entire text, as amended, of the general guidelines.
16. Mr. MOVCHAN observed that the last sentence of paragraph 5 of the text under consideration contained the words "the degree of actual enjoyment of rights by persons in the State concerned", whereas the draft general observations referred to peoples and not to persons. He feared that during the consideration of the reports of States parties, the wording of the last sentence of paragraph 5 might give rise to misunderstandings. Perhaps it would be better to speak of rights recognized by the Covenant.

17. Sir Vincent EVANS agreed that the last sentence of paragraph 5 should end with the words: "likely to show the degree of actual enjoyment of rights recognized by the Covenant".
18. Mr. TOMUSCHAT said that he had proposed the deletion of the words "mutual understanding" from the last paragraph because they were vague and had emotional overtones. However, by way of compromise, he was prepared to accept paragraph 7 as proposed by Sir Vincent Evans.
19. Mr. DIEYE said he thought that the provisions of the Covenant referred primarily to the exercise of human rights by individuals. It would therefore be advisable to include the word "individuals" in the last part of the last sentence of paragraph 5. If that was considered insufficient, the word "peoples" could also be included.
20. Mr. ERMACORA agreed with Mr. Dieye that either the wording of the Covenant should be retained in the new paragraph 6 or the references to individuals and peoples should be deleted.
21. Mr. TARNOPOLSKY said it was his impression that the members of the Committee had already agreed to delete both references. The Committee should proceed with its consideration of the text of the general guidelines.
22. Mr. HANGA said he thought it was better not to speak of the actual enjoyment of rights because there could not be theoretical enjoyment on the one hand and actual enjoyment on the other.
23. Mr. ORTEGA said that he was prepared to support the text drafted by Sir Vincent.
24. Mr. BOUZIRI asked those members of the Committee who had shown signs of impatience to extend the same indulgence to those currently making comments as the latter might later be expected to extend towards them.
25. Mr. AL DOURI said that the English text (Part II, page 4) should make it clear that the reports should concentrate "mainly" on the points listed subsequently. States should not confine themselves to providing information on the six points specifically mentioned. Furthermore, he considered the reference to mutual understanding among nations to be indispensable and could not agree to its deletion.
26. The CHAIRMAN said that the word "mainly" would be added to the English version of the sentence referred to by Mr. Al Douri.
27. Mr. DIEYE said that, while he had no doubt that the Committee was about to adopt Sir Vincent's text he would urge that the phrase "actual enjoyment of rights by persons in the State concerned" should be retained.
28. Mr. LALLAH said that the text under consideration related to article 40, the wording of which must therefore be respected. Article 40, paragraph 1, spoke of "rights recognized herein", which should cut short any discussion.
29. Mr. DIEYE said he agreed with Mr. Lallah's reasoning.
30. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee adopted the revised version of the general guidelines regarding the form and contents of reports from States parties under article 40, paragraph 1(b), of the Covenant.
31. It was so decided.

Draft general comments prepared by the Working Group on "Follow-up"
(CCPR/C/XIII/CRP.2) (continued)

32. The CHAIRMAN pointed out that the draft general comments had already been discussed at length, so that the members of the Committee could perhaps submit directly to the Rapporteur any amendments they might wish to introduce.

33. Mr. LALLAH (Rapporteur of the Committee) said that he proposed to insert, in the appropriate chapter of the report, a paragraph explaining the reasons for which the Committee had adopted, in the proposed form, the text relating to the general comments. That paragraph would embody the idea expressed in the consensus of October 1980 and indicate that the Committee had adopted that text without prejudice to its further consideration of its duties under article 40, paragraph 4. The general comments would appear as an annex to the report.

34. Mr. DIEYE said that the explanation just given by Mr. Lallah answered his chief objection and would enable the Committee to arrive at a consensus.

35. Mr. SADI recalled his proposal that the report should indicate that the adoption of the general comments by the Committee did not affect the interpretation which would later be given to article 40, and, in particular, to paragraph 4 thereof.

36. Mr. LALLAH said that the Committee could consider drafting a sentence to that effect when it came to examine the relevant chapter of the report.

37. Mr. TARNOPOLSKY said that he hoped the Committee would adopt without delay the document under consideration and asked the Chairman whether he should submit his amendments directly to the Rapporteur.

38. The CHAIRMAN said that the members of the Committee could submit their suggestions directly to the Rapporteur. If any of those amendments were controversial, the Rapporteur would consult the members on the subject and the Committee would consider them at a later stage.

39. Mr. TARNOPOLSKY welcomed that procedure. He wished, however, to make at once a suggestion concerning the last sentence of paragraph 2.1, which had some bearing on the substance of the matter. That sentence should be reworded in stronger terms, as follows: "Despite the guidelines, however, some reports are still so brief and general that they do not satisfy the reporting obligations under Article 40".

40. The CHAIRMAN said that, in the light of the observations already made on the subject, the Committee should have no objection to replacing the last sentence of paragraph 2.1 by that wording.

41. Mr. LALLAH said that he had received the text of an amendment to insert in paragraph 2 a new subparagraph (4) reading: "It is the practice of the Committee, in accordance with Rule 63 of its Provisional Rules of Procedure, to examine reports in the presence of representatives of the reporting States. All States whose reports have been examined have co-operated with the Committee in this way but the level, experience and quality of representatives have varied. The Committee wishes to state that, if it is to be able to perform its functions under Article 40 as effectively as possible and if the reporting State is to obtain the maximum benefit from the dialogue, it is

essential that the State representatives should be senior officials or experts who have the authority and competence to respond to questions put, or comments made, in the Committee over the whole range of matters covered by the Covenant". That subparagraph could perhaps be added to paragraph 2 if the members of the Committee had no objection.

42. The CHAIRMAN pointed out that it would be desirable to add to the text of that subparagraph a statement to the effect that the representatives of reporting States should be in sufficient number to be able to respond within the time available to the very numerous questions which were normally put to them.

43. Mr. GRAEFTRATH said that he was not altogether satisfied with the wording of the proposed new subparagraph. It was for the reporting State to decide whether it should send representatives of a particular level. The wording of the subparagraph should be made less rigid, in so far as it referred to the competence and number of the representatives.

44. Mr. BOUZIRI said that the Committee would be quite right in stating, courteously but clearly, that States must be represented by competent persons, whether high officials or persons outside the administration, such as members of parliament, and in stressing the need for the State to be represented by several persons. Experience had shown that a single representative was not in a position to deal with all the questions put by the members of the Committee.

45. Mr. SADI said that the Committee should not spend too much time discussing the wording of what were merely comments addressed to States parties. Perhaps the Committee should say: "It is recommended that States parties should send a delegation consisting of several persons".

46. Mr. TOMUSCHAT said that the general comments should focus on the points arising from the consideration of the reports of the States parties; the Committee should not tie its hands by dealing with questions concerning the interpretation of the Covenant. Paragraphs 4.2 and 4.3, for example, appeared to go much further than the provisions of article 2, paragraphs 1 and 3, of the Covenant. With regard to discrimination based on sex, he drew attention to the existence of the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180), which made provision for a body to be responsible, among other things, for ensuring the elimination of discrimination precisely in the areas mentioned in paragraphs 4.2 and 4.3.

47. He stressed the difficulty of interpreting the Covenant and said that some questions, such as that of determining whether the Covenant prohibited discrimination in a private relationship, should be settled at a later stage; for the time being, it was better not to dwell too much on article 3 of the Covenant. The Committee had never discussed the meaning to be given to the concept of non-discrimination and, accordingly, he could not agree to that concept being developed in the general comments. In conclusion, he proposed that paragraphs 4.2 and 4.3 should be deleted.

48. Mr. HANGA, referring to the text proposed for insertion as paragraph 2.4, said that, according to rule 68 of the provisional rules of procedure "Representatives of the States Parties may be present at the meetings of the Committee when their reports are examined". Accordingly, the States parties were not obliged to send representatives to the meetings of the Committee. How then could the Committee require States to send a "sufficient number" of representatives? In his view, that requirement could lead to difficulties for the developing countries, mainly from the financial point of view.

49. Mr. PRADO VALLEJO said that he shared the views expressed by Mr. Tomuschat. The Convention on the Elimination of All Forms of Discrimination against Women, was much broader in scope than article 3 of the Covenant, and made provision for a whole series of measures to be taken at both the national and the international levels. Paragraph 4 of the text of the general comments should therefore be reviewed in the light of that instrument. Perhaps it should be replaced by a declaration of a general character which did not refer solely to situations of discrimination based on sex. If the Committee decided to keep subparagraphs (2), (3) and (4) of paragraph 4, it should at least reword them.

50. Mr. DIEYE pointed out that, while it was practically superfluous to indicate to certain States the level at which they should be represented before the Committee, such an indication was, however, necessary in the case of many developing countries because, even among those which had ratified the Covenant, there were some which were still unaware of the Committee's existence. It would also be advisable to indicate to reporting States that they should reply without delay to the questions put to them by the Committee. In addition, although it was true that, under rule 68 of the rules of procedure, States were not obliged to send representatives to the meetings of the Committee, there was by now an established practice to that effect, and it would not be incompatible with the spirit of that article to say in the general comments that reporting States should send representatives in sufficient number and of a high level.

51. Mr. ERMACORA said that he would submit to the Rapporteur the text of a minor amendment which he proposed for paragraph 2.2 of the general comments. He fully supported Mr. Tomuschat's remarks and believed that the general question currently facing the Committee was to determine the manner in which States should report to the Committee on those questions of discrimination which were, or would subsequently be, the subject of instruments adopted by the United Nations on discrimination. Among such instruments were the International Convention on the Elimination of All Forms of Racial Discrimination, the Declaration on the Elimination of Discrimination against Women, and the International Convention on the Suppression and Punishment of the Crime of Apartheid. The Committee's general comments on the important problem of discrimination were not brought out clearly by paragraph 4, which ignored numerous forms of discrimination. It would be preferable, therefore to reword that paragraph by drawing more especially on the language of article 2 of the Covenant.

52. Mr. OPSAHL said that article 2 of the Covenant, because of its crucial importance, could give rise to many general comments. However, the Working Group's proposal did not claim to be exhaustive. By referring to article 3, the Working Group had wished to illustrate the general duty of States to give effect to their precise and positive obligations under that article regarding equality of rights between men and women. It should be remembered in that respect that article 3, by guaranteeing that equality, supplemented article 2, which related to individual

rights and remedies. The Committee could, of course, express its views on the various forms of discrimination in later general comments, and it was a matter for regret that it had not yet had time to hold a general debate on the interpretation of article 3 of the Covenant.

53. At all events, he would prefer the members of the Committee to reach a compromise with regard to paragraph 4 of the draft, rather than to delete portions of it. However, the wording of the last sentence of paragraph 4.2 could be amended to read: "... the role of women in practice with a view to ascertaining what measures, in addition to purely legislative measures of protection, had been or were being taken ...". In that manner, the reference to the rights of women in all spheres of activity would be dropped and the resulting wording would perhaps be more in line with the contents of article 3 of the Covenant. In fact, in the questions asked by the members of the Committee and the replies given by the representatives of States, many references could be found to discrimination based on sex, even although such discrimination had never been the subject of a substantive debate in the Committee.

54. Mr. SADI agreed with Mr. Dieye that many developing countries needed guidance with regard to the level of their representation before the Committee. With regard to paragraph 4 of the general comments, concerning which it had been proposed that the wording of the Covenant should be adhered to, he said that the purpose of the comments was not to reiterate the provisions of the Covenant but, on the contrary, to elaborate upon its articles. Thus, the reference to immigration laws was entirely relevant and, although objection might be raised to those laws, rather than others, being mentioned it could not be denied that their application in the framework of the Optional Protocol had often been discussed by the Committee. It was therefore quite appropriate to mention those laws in that very important document, to the preparation of which the Committee could usefully devote more time than it had originally planned.

55. Sir Vincent EVANS said that the current wording of the draft of the general comments constituted a good basis for adoption. He proposed, however, the insertion of a few additional sentences concerning publicity, in the form of a new paragraph 3.2, which would read: "In this connection, it is very important that individuals should know what their rights under the Covenant are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training." Furthermore, he supported the insertion at the end of that paragraph of an additional sentence proposed by Mr. Opsahl, which would read as follows: "It is desirable also to give publicity to the State party's reports and its co-operation with the Committee."

56. With regard to paragraph 4, he said that, while the wording could no doubt be improved it was necessary, first and foremost, to delete all reference to immigration laws since article 12 of the Covenant did not recognize the right of aliens to immigrate into a country and no other provision of the Covenant dealt specifically with that question.

57. Paragraph 5 as a whole, and in particular paragraph 5.3 up to the words "... and extent of the derogations they have made", dealt with the duties incumbent upon States under article 4 of the Covenant. As for the concluding five lines of that paragraph, however, he pointed out that article 40 of the Covenant gave no precise indication as to the manner in which States parties should report on the derogations in question, and that the only existing provisions on that subject appeared in article 4 of the Covenant. To request reporting States to indicate in detail in their reports the nature and extent of each right derogated from would be to go much further than what was generally required of them by articles 4 and 40 of the Covenant. Besides, and in particular for reasons of security, it would not always be possible for a State to furnish details. It was preferable therefore to delete the last part of paragraph 5.3.

58. Mr. TARNOPOLSKY favoured the adoption of the general comments as a whole. Turning to the various amendments in the order in which they had been proposed, he first of all supported the amendments proposed by Sir Vincent Evans to paragraphs 2.3 and 2.4. On the other hand, he urged the Committee to retain, in their current form, the various subparagraphs of paragraph 4. It should be remembered that the general comments were neither final nor exhaustive and that they could always be supplemented later by further comments. Paragraph 4.2 contained a statement of precise facts which reflected reality, and it was important to retain it. Paragraph 4.3 did not deal with immigration laws but with the right of women to marry aliens, and he could see no reason why that example should be deleted, since the Committee had already expressed its views on that question on a number of occasions.

59. With regard to paragraph 5.3, he suggested the insertion of the words "and indicate the reasons therefore in accordance with article 4, paragraph 3, of the Covenant" after the words "extent of the derogations they have made". Apart from that, he opposed the proposal to delete the rest of the sentence because, although it was true that nothing in article 4, paragraph 3, of the Covenant required a State to inform the Committee of its reasons for derogating from certain obligations, the Committee had nevertheless stated on several occasions that a State could not fulfil its reporting obligations if it was in an emergency situation because, in that case, the report would not reflect reality. The last part of paragraph 5.3 was therefore consistent with the Committee's earlier decisions.

60. Mr. MOVCHAN pointed out that the Committee was bound by the provisions of the Covenant and that everything said in the general comments was based on the Committee's own experience. As stressed by the Chairman, the members of the Committee had to realize that, while they could revert at a later stage to all the problems raised thus far and to all the points on which certain members disagreed, they must, due to the lack of time, take an immediate decision on the adoption of the proposed text. The Committee had agreed, in its decision of 30 October 1980, that it would proceed in a certain manner, namely "without prejudice to the further consideration of the Committee's duties under article 40, paragraph 4 of the Covenant". It could therefore consider the present comments as the commencement of its work on certain questions and revert later to the proposed amendments. For the time being, however, because of the pressure of time, it would be preferable to adopt immediately the general comments as a whole in their current form.

61. The CHAIRMAN noted that the list of speakers had not been exhausted and proposed that the first hour of the following meeting should be devoted to the consideration of the draft general comments. The Committee should take a speedy decision if it wished the comments to appear in the report.

The meeting rose at 1 p.m.