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SUMMARY RECORD OF THE 321st MEETING

Held at the Wissenschaftszentrum, Bonn-Bad Godesberg,
on Wednesday, 21 October 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.40 a.m.

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

Netherlands and Netherlands Antilles (CCPR/C/10/Add.3 and Add.5)

1. Mr. BURGERS (Netherlands), introducing the initial report of the Netherlands (CCPR/C/10/Add.3), said that the major characteristics of the legal and political system of the Netherlands that were relevant to the Covenant could be summarized in the following way: the Netherlands was a parliamentary democracy, with an independent judiciary and a system of fundamental rights and freedoms, largely defined in the Constitution, which had been the supreme legal document of the Netherlands State up to 1954 when the Charter of the Kingdom of the Netherlands had been proclaimed.

2. The written Constitution of the Netherlands dated back to 1814. It had been amended on various occasions, but nevertheless bore the traces of its age. For that reason, it had been decided in the 1960s to undertake a complete revision of the Constitution; the work was in its final stage and the new Constitution would probably enter into force in the first half of 1982. The new Constitution would not change the existing constitutional system, but would reflect it more accurately and more systematically. On certain points, however, it would bring changes. In particular, the constitutional protection of the basic rights set forth in the first chapter would be extended.

3. One element of the constitutional system that would be retained under the new Constitution concerned the relationship between domestic law and international law. As was stated in section I (b) of the report, provisions of international agreements to which the Kingdom of the Netherlands was a party could be applied directly inasmuch as such provisions were capable of binding all persons and, in the event of a conflict with internal law, it was those provisions that took precedence. That applied to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which had entered into force for the Netherlands in 1954, and was now true of the provisions of the Covenant. There had been 48 reported cases, some of them quite interesting, in which the Netherlands courts had mentioned provisions of the Covenant in their opinions.

4. As to the implementation of the Covenant in domestic law, he noted that the provisions of the Netherlands Constitution already covered many of the articles of part III of the Covenant and that the new Constitution would go even further in that direction. Its first chapter contained an extensive catalogue of basic rights, not only civil and political rights but also social and economic ones. The two International Covenants of 1966 had been one of the main sources of inspiration for elaborating the new constitutional provisions on basic rights and freedoms. In that connection, he mentioned that, on the initiative of Parliament, a new article had been included earlier in 1981 in the chapter on the administration of justice, which laid down that the death penalty could not be imposed.

5. With particular reference to the question of racial discrimination, he pointed out that, since the report had been prepared, a law had been enacted which had deliberately broadened the field of application of the provisions of section 429 (4) of the Netherlands Penal Code, quoted on page 28 of the report. The expression "discriminates against" had been replaced by the expression "distinguishes between", and the restrictive phrase, "when proffering goods or

services or when making good an offer" had been dropped. He then referred to page 36 of the report, where it was stated that a Sex Discrimination Bill was under preparation, and explained that the Bill would cover a wider field than that of sex discrimination alone. The Equal Treatment Bill would have the effect of prohibiting unwarranted distinctions between persons on grounds of sex, homosexuality, marital status or family responsibility. The already existing Equal Pay for Men and Women Act and Equal Treatment of Men and Women Act would be incorporated into the new act. The draft further provided for the creation of a body of experts to monitor the application of the new act. The Government had published the proposed bill in order to enable all interested persons to study it and give their opinion.

6. Referring to paragraph 4 of the committee's general comment 4/13 (CCPR/C/21), he observed that, some years before, an interministerial commission had made a complete inventory of provisions of Netherlands legislation which made distinctions between men and women or between married and unmarried people. A study was under way to examine how far those provisions were compatible with the principle of non-discrimination and whether they should be retained, modified or abolished. With regard to paragraph 2 of general comment 4/13, he informed the Committee that several kinds of affirmative action were being undertaken in the Netherlands to improve the position of disadvantaged groups in society and to promote the emancipation of women.

7. The Netherlands Government also paid particular attention to measures for the protection and advancement of ethnic minorities, often called cultural minorities in the Netherlands, which currently formed 4 per cent of the Netherlands population. The Minister of the Interior co-ordinated the measures taken by various government departments for the benefit of ethnic or cultural minorities. In that connection he referred to the biennial reports submitted under the International Convention on the Elimination of All Forms of Racial Discrimination, the latest of which had been discussed by the Committee on the Elimination of Racial Discrimination a short time before.

8. With regard to the last two paragraphs on page 24 of the report, concerning protection of privacy, he said that the preparation of new statutory provisions on such protection was in a fairly advanced stage: the Government was expected to submit four important bills in that field to Parliament by the following year.

9. Turning to the question of remedies, he said that he had noted the interest shown by members of the Committee in the institution of ombudsman and that several such magistrates were already at work, but solely at the local level. For example, some years before, the Municipal Council of The Hague had appointed a municipal ombudsman. Earlier in 1981, however, a law had been enacted creating the office of National Ombudsman. The National Ombudsman would be appointed by the Parliament and would have extensive powers to investigate complaints by individuals about improper behaviour on the part of the authorities.

10. He also drew attention to the fact that, among the States members of the Council of Europe that had ratified the Optional Protocol to the International Covenant on Civil and Political Rights, the Netherlands was the only one which had not entered a reservation excluding the consideration by the Human Rights Committee of cases that had already been dealt with under the European Convention for the Protection of Human Rights and Fundamental Freedoms. That was not an oversight. The issue had been discussed in the Parliament, which had endorsed the opinion of the Government that individuals should be given the possibility of applying to the Human Rights Committee even after having exhausted the remedy given by the European Convention.

11. In conclusion, he said that the Netherlands attached great importance to the International Covenant on Civil and Political Rights and to the work of the Committee. In addition to the Government of the Netherlands, certain parts of the population were also interested in the Covenant, as shown by the written commentary on the Netherlands report submitted by the Dutch section of the International Commission of Jurists, copies of which he believed had been circulated to members of the Committee. Though he did not agree with everything that was said in that document, he welcomed the interest shown by that Netherlands organization in the work of the Committee and its desire to contribute to the establishment of a constructive dialogue between the Government of the Netherlands and the Committee.

12. Mr. BRAAM (Netherlands), designated by the Government of the Netherlands Antilles to introduce part B of the initial report, relating to the Netherlands Antilles (CCPR/C/10/Add.5), recalled that on 21 September 1978, when the bill to give approval to the International Covenant on Civil and Political Rights had been discussed in the Netherlands Parliament, the representatives of the Netherlands Antilles participating in the discussion had particularly stressed the right of peoples to self-determination. One of those representatives, at that time an opposition leader in the Antillean Parliament and now Prime Minister, had stressed the essential link between the exercise of human rights and the enormous problems the country was facing in the social, economic and financial fields, in education and housing, and, above all, in the field of employment, where the unemployment rate had then stood at 20 per cent. He had expressed the opinion that the Antillean Government must do its utmost to improve that situation so as to create conditions that would allow Antillean citizens full enjoyment of their rights and freedoms under the Covenant. He had called upon the Netherlands Government and the international community to help the Antillean Government to accomplish that heavy task. Those were the economic and social circumstances surrounding the reservations made by the Kingdom of the Netherlands with regard to article 12, paragraph 1, and article 25 (c).

13. Since 1955 the Netherlands Antilles had been a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. It had also recognized the right of every individual in the Netherlands Antilles to lodge complaints with the European Court of Human Rights concerning violations of his rights under the European Convention. In the same way, when acceding to the International Covenant on Civil and Political Rights, the Netherlands Antilles had chosen also to accede to the Optional Protocol to the Covenant, which it considered to be a very important international instrument for the promotion of human rights; it would become all the more important for the Netherlands Antilles when the country became independent.

14. Many of the provisions regarding the rights set out in part III of the Covenant were directly applicable to the Netherlands Antilles and could be applied by the Courts without any legislation being required. Where national legislation was needed to implement the Covenant the legislative texts were expressly mentioned in the report.

15. The Netherlands Antilles was currently engaged in discussions with the Kingdom of the Netherlands on ways of achieving a new constitutional relationship between the two countries and attached great importance to the right of peoples to self-determination. In that connection, he pointed out that a Round Table Conference between the Netherlands, the Netherlands Antilles and the four island territories of the Netherlands Antilles had taken place earlier in 1981 and that the right of the

peoples of each of those islands to determine their political status had been unanimously affirmed. In the event that the islands opted for independence, the Netherlands Government had agreed to support their recognition as independent States. The Committee would be kept informed of further developments. Furthermore, a colloquium dealing with aspects of international law relating to the independence of the Netherlands Antilles had been organized in January 1980 by the University of the Netherlands Antilles and the University of Amsterdam; the participants in that colloquium had given much attention to human rights.

16. He then made some corrections and clarifications to the report itself. With regard to article 14 of the Covenant, he explained that the reservations made with regard to paragraph 3 affected only subparagraph (d). Concerning article 19 of the Covenant, mention was made of article 7 of the Governor's Decree of 15 October 1955, which stipulated that the text of speeches, talks, plays and other radio programmes principally consisting of the spoken word must be submitted to the local chief of police three days before the broadcast for his approval. In practice, however, the provisions of that article were no longer applied and, as pointed out in the report, the Decree in question would be amended in order to bring it into conformity with article 19, paragraph 3, of the Covenant.

17. With regard to article 22, the report stated that the rights and obligations of civil servants were defined by the Government unilaterally by statutory regulation, which civil servants' unions must observe. The word "unilaterally" was used incorrectly in that context, because the legal position with respect to the rights and obligations of any civil servant was basically governed by the Antillean Public Servants' Substantive Law. The grounds on which civil servants could be dismissed or suspended and their right to appeal against dismissal or suspension were specified in that Law. Of course, the appointment, dismissal, disciplinary control, promotion and transfer of a civil servant fell within the competence of the Government and, in that sense, one could speak of a unilateral competence, but it should be pointed out that whenever a civil servant considered that his rights had been violated by a decision of the Government, he could have that decision reviewed, in the first instance by an independent judge and, at a later stage, by a special Public Service Tribunal.

18. With regard to the reservation made for the Netherlands Antilles with respect to article 25 (c), he pointed out that every citizen in the Netherlands Antilles, male or female, had access, on general terms of equality, to public service. The slight restrictions concerning appointment and termination of employment of women in the civil service concerned only married women when they were not considered to be breadwinners of the family. However, any married woman was entitled to lodge an appeal against her dismissal with the independent judge and the special Public Service Tribunal.

19. In conclusion, he said that he was prepared to furnish the Committee with any further information it might need.

20. Mr. MOVCHAN congratulated the representative of the Netherlands on the quality of the report, which had been prepared in accordance with the Committee's procedures and guidelines and had taken account of the general comments adopted by the Committee at its previous session.

21. He pointed out to the representative of the Netherlands that it was not necessary for a State party to indicate whether or not it approved of the content of documents submitted by non-governmental organizations, since the Committee's practice was to refer only to official United Nations documents.

22. In his statement, the representative of the Netherlands had indicated that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights had been a source of inspiration in preparing certain legislative provisions on human rights in the Netherlands, but no details had been given on that matter in the report. While welcoming the information that new legislation was being prepared in order better to guarantee those rights, he regretted that the authors of the report had neglected the fact that measures to improve the quality of life, as set forth in the Charter of the United Nations, must be not only administrative and legislative, but also social and economic in nature. Since that was no easy matter, difficulties affecting the implementation of certain provisions were anticipated in the Covenant; however, the authors of the report had mentioned no obstacles of that kind.

23. The authors of the report had interpreted the provisions of the Covenant dealing with international law in a way which was sometimes subjective and open to discussion and which, in certain cases, did not correspond at all to the norms of jus cogens. He noted from the section of the report relating to article 2 of the Covenant that the Netherlands Government was endeavouring to make the basic law of the Netherlands consistent with the Covenant.

24. Stating that his questions would relate exclusively to the part of the report which concerned the Netherlands (part A), he pointed out that in section I (b) concerning the International Covenant on Civil and Political Rights and Netherlands domestic law, it was said that most of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms containing substantive rights were directly applicable; since the representative of the Netherlands had indicated in his introductory statement that the courts had in certain cases applied the provisions of that Convention directly, he would like to know whether the Covenant had also been applied directly and why the European Convention was directly applicable whereas in the case of the Covenant, a Supreme Court decision was necessary. He found that all the more surprising since there were more rights recognized in the Covenant than in the Convention. The latter had a more limited field of application and provided for less extensive rights than did the International Covenant on Civil and Political Rights; the report had made no mention of those two differences. An additional point - and an extremely important one - was that the International Covenant on Civil and Political Rights involved, for the countries which had ratified it, the establishment of relations and links with developing countries, whereas the European Covention on Human Rights did not.

25. He asked for an explanation of the specific differences between the two types of law, "formal law" and "substantive law" mentioned in paragraph I (f) (i) of the report.

26. He would like to know the position of the Netherlands Government with regard to article 20, paragraph 2, of the Covenant, which prohibited any advocacy of national, racial or religious hatred, for neither section 137 (c), section 137 (e), nor section 429, which had all been added to the Penal Code, were particularly enlightening. If, as the report stated, a Bill had been submitted to the Lower House of Parliament to make the penal provisions against racial discrimination more severe,

that must mean that such discrimination existed and, there again, he wondered why the difficulties encountered in implementing the Covenant in that respect had not been mentioned. An answer to that question was all the more necessary since, during a session of the Committee on the Elimination of Racial Discrimination, the existence of a Fascist party in the Netherlands had been found to constitute a violation of the International Convention on the Elimination of All Forms of Racial Discrimination; did not a violation of that Convention automatically mean a violation of the Covenant?

27. He was surprised at the arguments adduced by the Netherlands Government to justify the reservation made in respect of article 20, paragraph 1, of the Covenant. To his mind, there was hardly any legal provision that did not have some political aspect. He believed it was important to point out, in passing, that only four countries had formulated reservations in respect of that paragraph. The Netherlands' argument that "it is particularly difficult to formulate a statutory prohibition of war propaganda without interfering excessively with freedom of expression" appeared to him to be all the more untenable since that same freedom of expression was regulated in the case of the Civil Service, as was stated in the report in connection with article 19 of the Covenant.

28. Noting the statement in the report, in connection with article 3 of the Covenant, that "most obstacles to the achievement of equal opportunities for women in the regulations of the civil service and local government have been removed", he asked for information about obstacles to the achievement of equal opportunities for all those living in the territory, including foreigners and stateless persons. The measures adopted in that connection were not very clear; for example, in the section of the report concerned with article 13, it was stated that a Bill to extend the legal protection and legal assistance available to aliens was currently in preparation. The inevitable conclusion was that, to date, aliens had not enjoyed adequate legal protection. He asked for further information on the application of articles 13 and 14 of the Covenant.

29. With regard to article 6, he welcomed the fact that the abolition of the death penalty was envisaged as part of the over-all revision of the military criminal and disciplinary codes but asked what the current situation was. He would also like more information on provisions concerning protection of the integrity of the person.

30. In his view, Netherlands legislation was incompatible with article 11 of the Covenant, which provided that "no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation"; that principle did not seem to be applied unconditionally in the Netherlands.

31. He asked what the computerized recording of personal data referred to in the last sentence of the comments relating to article 17 involved and what kind of data were recorded.

32. With regard to article 27 concerning protection of minorities, he welcomed the fact that, according to the report, the Netherlands authorities were endeavouring to eliminate inequality of treatment based on language; nevertheless, he recalled that during the recent examination of the Netherlands report by the Committee on the Elimination of Racial Discrimination, the Netherlands Government had formulated a reservation in that connection. He would like some explanations on that point.

33. Mr. OPSAHL, after praising the exceptionally high quality of the Netherlands report, said that, though it was the practice of the members of the Committee only to take official United Nations documents into consideration, that was to avoid citing documents that the representatives of the States parties might not have available; however, there was nothing to prevent a State party from referring to documents issued by non-governmental organizations.

34. According to what was said in part A, section I (b) of the report (CCPR/C/10/Add.3), most of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms were directly applicable in the Netherlands. However, whether or not an international convention was directly applicable depended on the interpretation of article 65 of the Netherlands Constitution. He would therefore like to know whether that article 65 was applied when an agreement such as the Covenant was by its substance capable of extending rights to all persons rather than of binding all persons, and whether an agreement which by its substance was capable of extending rights to all persons was also to be considered an agreement which by its substance was capable of binding all persons. When an agreement was considered as capable by its substance of binding all persons, that probably meant that it created an obligation for all persons. If that was the case, he wondered why it would not follow that the Covenant, if it was regarded as directly applicable, should be considered to have third-party applicability.

35. Turning to section II of the report, he said that the comments on article 6 of the Covenant did not provide any information on any positive measures that might have been taken by the Netherlands to protect the right to life. He would like to have information on that point.

36. With regard to article 7 of the Covenant, he would like to know whether the Netherlands had laws prohibiting a person from being subjected without his free consent to medical or scientific experimentation, and whether there was a system of surveillance and control to prevent prisoners from being subjected to ill-treatment.

37. He noted with appreciation, in connection with article 9 of the Covenant, that the principle of habeas corpus was to be incorporated into the Netherlands Constitution. However, the report did not specify the extent of the courts' powers in that matter or stipulate whether, in the case of detention of mentally ill persons, judges would simply make sure that the authorities had not exceeded their competence, or whether they would also seek to determine whether the person detained really was mentally ill. He would like to know the position of the Netherlands Government on that matter.

38. The Government of the Netherlands had formulated a reservation in respect of article 10, paragraph 2 (a) of the Covenant. That reservation had been criticized by the Dutch section of the International Commission of Jurists. He would like to know the response of the Government of the Netherlands to those criticisms.

39. With regard to article 13 of the Covenant, he would like to know whether an alien who had been resident in the Netherlands for less than a year and who was the subject of an expulsion measure could have his case reviewed by the Minister of Justice and whether the Government of the Netherlands believed that that remedy was in conformity with the requirements of article 13 of the Covenant. He would also like to know whether, in such cases, the person in question was represented before the Minister of Justice and whether the procedure was oral or written.

40. Concerning the presumption of innocence, the remarks in connection with article 14, paragraph 2, of the Covenant, which were extremely brief, did not provide the information expected. The presumption of innocence concerned not only judges but also all public authorities. He would like to know the views of the Government of the Netherlands on that point.

41. According to the comments on article 15 of the Covenant, in the event that legislation was changed after an offence had been committed, the provisions most favourable to the accused were applied. He would like to know whether those provisions were applicable in cases in which a judicial decision had already been taken, which would involve re-opening the trial, or whether they were applicable only when the trial was in progress at the time when the legislation was amended.

42. Article 19 of the Covenant gave rise in the report to a very interesting discussion on the constitutional questions raised by the protection of freedom of expression. However, he would like to know what was meant by "lesser authorities", in order better to understand which authorities could take action to limit freedom of expression. It was further stated in the report that according to the proposed constitutional amendment on basic rights, commercial advertising would be exempted from the constitutional rules on the publishing of ideas and sentiments and that the legislative authorities would have freedom to lay down regulations on commercial advertising. He would like to know how the Government of the Netherlands intended to distinguish between commercial advertising aimed at prospective buyers and information for the protection of consumers.

43. Finally, he noted that the Government of the Netherlands believed that article 21 of the Covenant affected the relationship between citizens. He wondered why it did not have the same opinion concerning article 22.

44. Mr. GRAEFRATH thanked the Government of the Netherlands for its interesting report. Turning to section I ("General considerations"), he observed that in certain cases citizens could be tried in military courts. He would like to know what those cases were.

45. According to the report, the incorporation of the provisions of the Covenant in Netherlands domestic law depended on whether or not substantive rights were involved, and it was for the courts to determine what constituted a substantive right. He wondered whether that did not give rise to an element of legal uncertainty for the individual. He also wondered how civil servants in the lower ranks of the administration could respect the basic rights of the Covenant when the Government itself did not know which provisions of the Covenant were directly applicable. He would like to know, for example, whether the Government of the Netherlands, considered the rights mentioned in article 3 and article 2, paragraph 2, of the Covenant to be substantive rights.

46. Though he, too, believed that third-party applicability of the provisions of the Covenant should not be confused with their direct applicability and that third-party applicability need not be the same for all the provisions, he found no indication in the report of the criteria for determining whether a provision of the Covenant could be generally applicable. He would like to know whether or not the provisions of article 3 of the Covenant had third-party applicability, and whether articles 20 and 26 had third-party applicability. What was meant by the expression "having binding force on all persons"?

47. In connection with article 1 of the Covenant, the report stated that, after the Charter of the Kingdom of the Netherlands had entered into force in 1954, the Government of the Netherlands had taken the view that the Netherlands Antilles was no longer a Non-Self-Governing Territory. But though the Netherlands Antilles seemed to enjoy a certain form of autonomy, it had not enjoyed self-determination, the most important expression of which was independence. The Committee had been informed that, after 1959, there had been discussions on the independence of the Netherlands Antilles and that a Working Party had prepared a report on the question. He would like to know what the results of those discussions and the conclusions of that report had been.

48. The report stated that the Netherlands judicial system left no scope for discrimination on grounds referred to in article 2, paragraph 1, of the Covenant. Since that statement concerned only the judicial system, he wondered whether it meant that the prohibition of discrimination in the Netherlands was held to be a provision relative to the application of the laws but not to their formulation.

49. Concerning article 20, paragraph 2, of the Covenant, the report stated that legislation against racism had been adopted in the Netherlands or had been submitted to the Parliament. According to section 429 (3) of the Netherlands Penal Code, any person who participated in, or provided financial or other material support for, activities directed towards discrimination against persons on account of their race was liable to a term of imprisonment or a fine. He asked whether that provision had ever been applied to persons providing material or other support to the apartheid régime and whether there had been any court decisions on that matter.

50. He did not understand why it should be so difficult to apply the provisions of article 20, paragraph 1, and thus to prohibit war propaganda, which was certainly a misuse of freedom of expression. Though the Government of the Netherlands had entered a reservation in respect of article 20, paragraph 1, it had not done so in respect of article 5, yet article 20 was simply a specific application of article 5. Since a bill against war propaganda was to be submitted to the Netherlands Antilles Parliament, there was perhaps reason to hope that a bill of that type could be put forward in the Netherlands.

51. With regard to article 6 of the Covenant, he would like to know what the Government of the Netherlands was doing to reduce infant mortality and what had been the results of any measures taken. He would also like to know the rate of infant mortality in the Netherlands Antilles in comparison with the rate in the Netherlands.

52. Concerning article 7 of the Covenant, he noted that Dutch law did not contain a definition of torture. He would like to know whether the adoption of specific legislation against torture was being considered in the Netherlands, and whether there were laws prohibiting a person from being subjected without his free consent to medical or scientific experimentation. The report mentioned article 13 of the Convention on the Treatment of Prisoners of War. He wondered if, from the standpoint of penal law, the application of that article was sufficient to give effect to article 7 of the Covenant.

53. According to the comments in connection with article 9 of the Covenant, the principle of habeas corpus was to be incorporated into the Constitution, and paragraph 4 of article 1.14 of the proposed constitutional amendment would provide an explicit constitutional basis for a development already in progress and would obviate the need for extensive additions to be made to the many statutory provisions on that point. However, it was not clear to him to what extent legislation had already been amended, or what was being considered. He would like to have explanations on the matter.

54. In connection with article 10 of the Covenant, the report mentioned independent Boards of Visitors and a Central Advisory Board which exercised supervision of houses of detention and mental institutions. He would like more information on the composition, duties and competence of those bodies.

55. The commentary on article 11 of the Covenant gave a restrictive interpretation to that article. It would seem from the report that, in the Netherlands, it was possible for a prison term to be imposed in a civil trial in order to obtain the fulfilment of contractual obligations. It might be useful to obtain some explanations on that point.

56. With regard to article 17 of the Covenant, the report did not specify in what circumstances it was possible to derogate from the provisions protecting privacy. It simply stated that the inviolability of privacy could be set aside only in cases laid down by law, pursuant to a decision taken by an authority designated by law. He would like to know what those cases were, which were the authorities designated by law and what was the practice followed.

57. Finally, concerning articles 23 and 24 of the Covenant, he requested more information on the social measures taken on behalf of the family and of the child.

The meeting rose at 1.05 p.m.