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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1731st MEETING

Held at Headquarters, New York,
on Tuesday, 23 March 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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*The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1731/Add.1.

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The meeting was called to order at 10.10 a.m.

GENERAL COMMENTS OF THE COMMITTEE (continued)

Draft general comment on article 12 of the Covenant (continued)

Paragraph 20

1. Mr. KLEIN, speaking as Chairperson/Rapporteur of the Working Group on article 40, said that some members were inclined to delete draft paragraph 20 as a whole, but others thought that it would be useful to draw attention to the procedural safeguards provided in article 2, paragraph 3, of the Covenant.
2. Mr. ANDO said that he had no strong views on the matter, but the remedy in article 2, paragraph 3, should cover any violation of any right, not just violations of article 12 of the Covenant.
3. Mr. POCAR said that he would prefer to delete the paragraph for the very reason that it referred to violations of any article, which was a departure from the other General Comments of the Committee.
4. Ms. EVATT said that it could be effective at some point in the draft to make a simple statement that a person claiming a violation of article 12 could claim an effective remedy under article 2.
5. Mr. SOLARI YRIGOYEN said that, because globalization would cause restrictions on movement between countries eventually to disappear, he favoured the broadest possible interpretation of article 12 as a whole.
6. The CHAIRPERSON said that there were three possibilities regarding paragraph 20 of the draft: to retain it, to delete it or to amend it along the lines of Ms. Evatt's proposal.
7. Lord COLVILLE noted that General Comment No. 20 on article 7 had mentioned article 2, paragraph 3. He agreed with Ms. Evatt that it would be useful to emphasize the legal process to provide an effective remedy.
8. Mr. YALDEN said that wording similar to that suggested by Ms. Evatt appeared in paragraph 24 of the draft. The point might better be dealt with by adding a paragraph at the end of the document.
9. Mr. POCAR said that the reference to article 2, paragraph 3, in the General Comment on article 7, was quite different: the Committee had asked States parties to include information on all available remedies under article 2 in their periodic reports. Merely repeating the wording of the Covenant would not be useful, however.
10. Mr. KLEIN said that the reference to article 2, paragraph 3, in paragraph 20 would be combined with paragraph 24 and moved to the end of the document. It would also be aligned with the General Comment on article 7, where

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States were asked to indicate in their reports the available remedies for violations of article 12.

Paragraph 21

11. Mr. KLEIN said that paragraph 21 of the draft general comment addressed article 12, paragraph 4, of the Covenant. The following phrase should be added at the end of the paragraph: "and a major argument against the lawfulness of enforced population transfer or mass displacement". In his view, the Committee would send a wrong signal if it did not mention issues of forced displacement. It must be emphasized that article 12, paragraph 2, was not the only argument against forced displacement; indeed the entire human rights regime spoke against it. The Committee had previously dealt with the question when it had considered the periodic report of Afghanistan in 1985.

12. Ms. EVATT said that in the first sentence, the phrase "existing strong" should be replaced by "particular". The addition proposed by Mr. Klein was valuable, but perhaps the arbitrary exile of individuals should also be mentioned, as it was also incompatible with article 12, paragraph 4.

13. The CHAIRPERSON said that she was surprised to see the right of entry linked with nationality. She also wondered whether arbitrary exile and population transfers also had to do with violations of the right to remain in one's home country.

14. Mr. LALLAH said that the Committee did not have much experience concerning circumstances where article 12 was relevant. In his view, the paragraph required more thought, as its focus was too broad.

15. Mr. KRETZMER said that the Committee had discussed the right to remain in one's country when it had taken up the Stewart vs. Canada case, but had decided not to include the concept in its decision. The General Comment should reflect committee jurisprudence. In the last sentence of the paragraph, the words "enter their country" should be replaced by "return". A reference to the right to remain should be included because it seemed peculiar to mention only the right of entry.

16. Mr. LALLAH suggested that, since the Committee did not have a great deal of actual experience in that area, States parties should be requested to give information on the laws and remedies which protected that right. The phrase "arbitrarily deprived" indicated that a State could deprive citizens of that right, but not arbitrarily.

17. Mr. BUERGENTHAL said that in the additional text proposed by Mr. Klein, the phrase "major argument" should be replaced by "implies a prohibition".

18. Mr. ANDO said that the wording of the paragraph should show the comprehensiveness of the rights provided under article 12, paragraph 4.

19. The CHAIRPERSON said that paragraph 21 would be redrafted to incorporate the suggestions of members.

Paragraph 22

20. Mr. KLEIN said that the original draft of the paragraph had dealt only with the majority opinion in the Stewart vs. Canada case, but members had felt that it would be useful to refer to the minority opinion as well. Although there had been no previous reference to a minority opinion in a General Comment, he had included it because of the wide division among members on that case.

21. Ms. CHANET said that it would be preferable to reflect the differing opinions without explicit reference to a case, which could prove to be a limitation in the consideration of other communications.

22. Lord COLVILLE said that he had doubts about including the minority view, as it might cause the same arguments to be raised each time reference was made to the General Comment. It would not be helpful to the international community, furthermore, to show that the Committee was divided on the interpretation of article 12, paragraph 4. He was inclined to avoid a reference to the case.

23. Mr. SCHEININ said that in the Stewart vs. Canada case, the disagreement had been about the application of the principles involved, rather than the principles themselves. The seventh sentence should be deleted and the eighth sentence should refer to "individual opinions" of some Committee members, rather than the "minority".

24. Mr. KRETZMER said that the Committee should bear in mind that the main purpose of General Comments was to provide guidance to States parties in fulfilling their reporting obligations. The Committee should indicate that, since article 12, paragraph 4, had been interpreted broadly, States parties, in reporting to the Committee on that article, should include information relating to the denial of the right of other persons who had formed strong relationships in that country to return to that country.

25. Mr. POCAR said that he agreed that the Committee should not refer to majority and minority views; its General Comments should reflect the consensus view. In any case, both majority and minority views could evolve over time. The Committee should therefore request information from States parties, but not be too precise about its own views.

26. Mr. KLEIN said that he agreed that no specific reference to the views of the minority should be included; however, the Committee should not hide the fact that there had been differences of opinion on the meaning of article 12, paragraph 4. He could support the proposal by Mr. Kretzmer. With regard to the comments made by Lord Colville, he recalled that the Committee had decided to keep the footnote in the draft general comment.

27. Mr. AMOR said that he agreed that General Comments should not refer to majority and minority views. Over time, a majority could become a minority, and vice versa; moreover, the composition of the Committee changed from one year to another. Furthermore, there should be no explicit references to the Committee's jurisprudence, since that too could evolve over time.

28. Mr. YALDEN said that he agreed that the Committee should avoid referring to majority, minority and dissenting views. Although the Committee's jurisprudence could change, until it did so it remained valid; he therefore considered that it was unacceptable to cite dissenting opinions in a general comment. He supported Mr. Kretzmer's proposal.

29. Lord COLVILLE said that he supported Mr. Kretzmer's proposal; at the same time, he felt that certain propositions which were shared by everyone could be distilled out of the minority views and included in the paragraph.

30. Ms. CHANET said that paragraph 22 could be amended by deleting the references to majority, minority and dissenting views and incorporating Mr. Kretzmer's proposal. The footnote would be retained.

31. Mr. BUERGENTHAL said that he agreed with Mr. Kretzmer's proposal. He suggested that the sixth sentence should refer to other categories of long-term residents, including, but not limited to, stateless persons.

32. Mr. KRETZMER said that the Committee needed to use very clear language in specifying what States parties needed to report. The main point was that States parties should include information on the rights of permanent residents to return to their country of residence. While it was true that not every permanent resident would fit into the category recognized by the minority, and it was possible that some persons who fitted into that category might not be permanent residents, States parties would at least be informed of one major category on which information should be supplied.

33. The CHAIRPERSON said that Mr. Klein would prepare a new draft of paragraph 22.

Paragraph 23

34. Mr. KLEIN said that paragraph 23 referred to limitations on the right to return to or enter one's own country. The concept of arbitrariness had already been taken up in General Comment No. 16, so he had merely referred to that General Comment.

35. Mr. KRETZMER said that it was not clear what the situation of persons who had dual nationality would be.

36. Ms. EVATT suggested that the words "for example by exile or by withdrawal of nationality" should be added at the end of the first sentence. The fourth sentence could then be reworded.

37. Ms. CHANET said that she supported Ms. Evatt's proposal.

38. Mr. ANDO said that he also supported Ms. Evatt's proposal. The fourth sentence needed to be rephrased so as to cover all possible ways in which loss of nationality could occur. Instead of simply referring to General Comment No. 16, it would be better to include a short sentence defining the concept of arbitrariness.

39. Mr. POCAR proposed that the penultimate sentence should become the second sentence of the paragraph. He agreed that the concept of arbitrariness should be defined.

40. Mr. KLEIN said that he could agree with the proposal by Mr. Pocar.

41. Mr. SOLARI YRIGOYEN said that he supported Mr. Pocar's proposal. The Committee must define the concept of arbitrariness, because the word "arbitrarily" was used in the text of article 12, paragraph 4, of the Covenant. It would be inconvenient for the reader to have to look up General Comment No. 16.

42. Mr. KRETZMER said that he had difficulty with Ms. Evatt's proposed amendment to the first sentence because it would be unclear whether the examples were examples of deprivation of the right to enter one's own country or of arbitrariness, and the main issue was the question of arbitrariness. Moreover, the inclusion of a reference to exile would be paradoxical, because when the Covenant had been formulated, it had been decided to include the word "arbitrarily" rather than make any reference to exile, which was still used as a punishment in some countries.

43. Ms. EVATT said that it was for that reason that she had wanted the word "arbitrarily", in the first sentence, to apply to both exile and withdrawal of nationality. She supported Mr. Pocar's suggestion about moving the penultimate sentence of paragraph 23. She agreed that the Committee should not simply refer to paragraph 4 of General Comment No. 16. Instead, it should use the wording of paragraph 4, adapting it to fit the current case.

44. Mr. BUERGENTHAL proposed that the fourth sentence should be deleted.

45. Mr. KLEIN said that he could agree to Mr. Buerenthal's proposal. The question of withdrawal of nationality must be addressed, however, to make it clear that such action was not the same as loss of nationality and could never deprive a person of the right to enter his own country. That point was very important because of the many cases in which States had tried to expel nationals or had not allowed them to return.

Paragraphs 24 and 25

46. Mr. KLEIN recalled that the Committee had already decided to move paragraph 24 to the end of the draft general comment, along with paragraph 20.

47. Mr. SOLARI YRIGOYEN said that he had certain fears that paragraph 24 might be misinterpreted as encouraging States Parties to speak of the necessity to deprive someone of the right to enter his own country, when the sense of the paragraph should be that no one can be deprived of that right. Authoritarian Governments usually proceeded in that way and might contend that it was crucial to prevent someone from entering the country. A communication could be sent to the Committee but that involved a long procedure which could deprive someone of the right to enter their country for many years. The remedy referred to in article 2, paragraph 3, of the Covenant would exist, even if the Committee did not mention it, and was repeated in paragraph 20.

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48. Mr. LALLAH said that the problem was not only one of misinterpretation but also the need to treat the issue globally, together with articles 20 and 25. It was important to mention not only the legal provisions guaranteeing the right, but also provisions restricting the right and the issue of remedies.

49. Mr. ANDO said that he shared Mr. Solari Yrigoyen's concern. Deprivation of the right was dealt with first in paragraph 24 and then the issue of an effective remedy was raised. Although he had originally suggested shifting the second concept to paragraph 25, now that the remedy clause had been incorporated into paragraph 20, he agreed that paragraphs 24 and 25 should be combined.

50. Mr. BUERGENTHAL said that he agreed with Mr. Lallah's suggestion to combine the two paragraphs but suggested that the Committee should delete the word "deprivation" and refer to "restrictions on the enjoyment of the right to enter one's own country".

51. Mr. KLEIN said that he agreed to combine articles 20, 24 and 25 in a final paragraph. He also agreed that, as it stood, paragraph 24 might be misleading. It did not exclude the possibility that a person could be deprived of the right to enter his own country because the wording of the Covenant only prohibited arbitrary deprivation.

52. Mr. POCAR said that he also agreed that the paragraphs could be combined and that mention should be made of the relevant guarantees. However, the specific reference to "constitutional law" in paragraph 25 might be unwise owing to the different ways in which the Covenant was implemented in various countries. A priority rule giving pre-eminence to the Covenant might be sufficient. It would be unwise to engage in a discussion on how rights should be implemented, especially in view of article 2 which stated that it should be in accordance with the constitutional processes of each country.

53. The CHAIRPERSON said that the first reading of the draft general comment on article 12 had concluded and suggested that the Committee proceed to examine the draft general comment on article 3 of the Covenant.

Draft general comment on article 3 of the Covenant (CCPR/C/65/R/10)

54. The CHAIRPERSON, speaking in her personal capacity, introduced the draft general comment on article 3, which she had revised on the basis of comments received from members of the Committee. The idea behind the general comments was to see if the Committee could develop the implications of article 3 with regard to the other rights protected under the Covenant. Accordingly, each paragraph referred to an article of the Covenant, setting out the corresponding right and then set forth comments with guidelines to States Parties.

55. She said that she took it that the Committee wished to proceed further in a closed meeting in order to deal with communications.

56. It was so decided.

The public part of the meeting rose at 12.15 p.m.