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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-fifth session

SUMMARY RECORD OF THE 47th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 17 November 2005, at 4 p.m.

Chairperson: Ms. BONOAN-DANDAN

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The meeting was called to order at 4.05 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Discussion with the United Nations High Commissioner For Human Rights on her Plan of Action

1. Ms. ARBOUR (United Nations High Commissioner for Human Rights) said that she hoped that the comments that she had made publicly since taking office had demonstrated the level of her commitment to economic, social and cultural rights. A vigilant and proactive approach was vital in order to prevent those rights from being neglected, given that human rights crises relating to civil and political rights tended to dominate the agenda of the United Nations and attract greater media attention.
2. The initiative to examine the feasibility of moving towards a unified treaty body system was anchored in the broader reform initiatives set out in the Secretary-General's report entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005), which had invited all sectors of the United Nations to consider whether the existing structures and mechanisms continued to be well suited in the context of the changing system. It was in that context that her Office had published its Plan of Action.
3. The reforms process should not detract from other, more targeted reform initiatives but should be viewed as an opportunity to consider in a profound and substantial manner whether the human rights treaty body system was all that it should be. The goal of the reforms was not to achieve cost savings, but to ensure optimum protection for rights-holders. The hypothesis that a centralized system might generate greater visibility and authority was a legitimate one, and deserved careful consideration. However, it was important for due account to be taken of the potential for a loss of specificity or of the expertise gleaned from years of accumulated experience. Any reform proposal must take into account the increase both in the overall number of human rights treaty monitoring bodies, and in the number of activities undertaken by each of those bodies. Other factors to be taken into account included the lack of capacity for follow-up, and the disturbing backlogs that some bodies faced. A unified treaty body would be less complex, more streamlined, and better known, and would act as one main door, behind which capacity for the necessary level of expertise would perhaps need to be maintained by means of separate chambers. A unified treaty body would also need to have the capacity to engage in new tasks, such as follow-up or fact-finding missions.
4. Superficial analysis of the issue was therefore not appropriate. Online consultations were under way in order to ensure the broadest possible input. On the basis of those consultations, and of those held with the treaty monitoring bodies and other actors, a concept paper would be produced by her Office that would describe what a standing unified treaty body might look like. The consultation process would continue and would be refined in the run up to an intergovernmental conference to examine the options in detail, in autumn 2006. The input of the existing treaty body system would be vital in determining the best way to proceed. She urged the members of the Committee to engage in the discussions on reform, which they should view as an exercise intended to explore whether the international human rights monitoring system, of which they were a part, was as good as it should be.

5. The CHAIRPERSON said that the Committee was anxious not to lose what it had achieved thus far. Aside from its primary work of reviewing State party reports and engaging in constructive dialogue with State party delegations, the Committee also adopted general comments and statements regarding major global developments that had an impact on the implementation of States parties' obligations. One such statement had been instrumental in securing the inclusion of the reference to examination of optional protocols to the Covenant on Economic, Social and Cultural Rights in the Vienna Declaration and Programme of Action. The Committee had been the first of the treaty bodies to formally open its doors to non-governmental organizations (NGOs), and was the only treaty monitoring body to have adopted an official document on NGO participation in its work.

6. The Committee worked closely with the specialized agencies of the United Nations system, in particular the International Labour Organization, the Food and Agriculture Organization, the World Health Organization and the United Nations Educational, Scientific and Cultural Organization. It was a disappointment for the Committee that the United Nations Development Programme, which had previously been closely involved in the work of the Committee, was no longer a major partner. The members of the Committee relied heavily in that regard on the secretariat staff of the Office of the High Commissioner for Human Rights, without whom it would be impossible for the Committee to maintain contact with the specialized agencies. The Committee had also embarked on, but been forced by a lack of resources to abandon, cooperation with the Bretton Woods institutions.

7. The day of general discussion held on globalization and its impact on the enjoyment of economic and social rights had demonstrated to the Committee the importance of reaching out not only to States parties, but also to the academic community.

8. Mr. RIEDEL said that he warmly welcomed the High Commissioner's public stance on the importance of economic, social and cultural rights. Any reform proposal should not preclude the eventual integration of any unified treaty body into a world court of human rights.

9. He could conceive of two options for a unified treaty body: the first option would be to merge only the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, replacing them with a professional standing body of between 24 and 30 members that would review State party reports and individual complaints, including complaints on economic, social and cultural rights once the relevant optional protocol had been adopted. Merging the two Committees without provision being made via an optional protocol for consideration of individual complaints on economic, social and cultural rights would run counter to the claim that all rights were universal and indivisible.

10. The second option would be to merge the two Committees only in respect of individual communications, while leaving the consideration of State party reports to the existing Committees. That option would mean that all individual communication, urgent action and interim protection procedures under all the existing treaty monitoring bodies could be concentrated within a single treaty body. However, it would require careful selection of the experts who would sit on that standing committee as well as a permanent staff allocation from the Office of the High Commissioner for Human Rights. In order to ensure that such a committee had sufficient, appropriately qualified members to be able to deal with detailed rights problems and the volume of communications submitted, a chamber solution would be necessary,

whereby each chamber could draw on one or two ad litem experts to be involved in consideration of a particular communication, from a list of elected special consultants. That solution would also serve as a mechanism to ensure that a member who was a national of the State referred to in a communication, or of a State that had not ratified the relevant treaty, did not participate in the decision. The election of new members to the committee would need to take account of their ability to deal with the technical details of particular economic, social and cultural rights. Elections should be based on the model of elections to the International Court of Justice or the International Criminal Court, at least a qualified majority in the General Assembly, or affirmation by the General Assembly of regional group nominations. The terms of office should be either one period of up to 12 years without opportunity for re-election, and with an age limit, or a shorter term of 4 to 5 years, with one opportunity for re-election. A single, longer term would enhance the independence of the Committee, whereas two, shorter terms would allow for an element of performance assessment. In his view, the only clear solution would be an amending protocol with innovative accession possibilities.

11. Mr. TEXIER said that he was glad to hear that the aim of the reforms was to improve the protection of human rights, and not to reduce costs. The introduction of the expanded core document had been a significant step forward in the unification of the treaty monitoring system. A unified treaty monitoring body would need to be a standing body. Consideration would need to be given to how many members such a body should have, and whether its membership should comprise experts, State representatives, or a combination of the two. The role of civil society in such a body must also be taken into account.

12. It was desirable to avoid unnecessary duplications which resulted in States parties being obliged to repeat the same information before several committees. However, a combined reporting procedure must not be allowed to result in a decline in the quality of the information or the level of detail currently provided by States parties. Follow-up was an issue of particular concern to the Committee. The elaboration of an optional protocol to the Covenant was thus critical. It was crucial for adequate resources to be made available to any unified treaty body, and for proper consideration to be given to the period of transition.

13. Ms. BARAHONA RIERA said the ultimate aim of the reform process was to protect human rights. All supported that objective, but perhaps not all were privy to the same information. She herself had received only the information available at the meeting in progress, and on that basis she felt she was unable to voice an opinion, only to raise concerns.

14. It was not her place to make a political or juridical assessment of the reform proposals. Her main concern, as a member of the Committee on Economic Social and Cultural Rights, was to protect economic, social and cultural rights and to ensure that none of the ground gained over many years in terms of the recognition and the justiciability of those rights was lost.

15. It was easy to criticize the treaty bodies, but there was a dire lack of technical and financial support to enable them to monitor treaty implementation adequately. The reform should include an assessment of where the problem lay - was it with the treaty bodies themselves or with the sources of funding?

16. The support provided to the Committee over the years had been inadequate, but States parties, too - particularly those of more limited means - received very little support or advice to help them in the very onerous reporting process. That went some way to explaining why their reports were not always of the highest quality.
17. Lastly, she said the question of the calibre of the experts on the treaty bodies was a fundamental one. Would the reforms really bring about any improvements in that regard or would the experts become mere bureaucrats? In the process of electing members, account must be taken of their professionalism and level of commitment to human rights, and of cultural diversity and regional balance.
18. Mr. SADI said the deficiencies of the current system were well illustrated by the provision of a mere three half-days to discuss a report covering a period of five years.
19. Yet the proposal to set up a single treaty body seemed to put the cart before the horse. The reason why there were currently so many treaty bodies was that there were too many treaties. Perhaps it was time to call a halt to the proliferation of human rights instruments and consolidate them into a single convention.
20. It was important to bear in mind, however, that one very important Member State, namely the United States, had a negative position on economic, social and cultural rights, and that that could impact upon a single treaty body, were that the route to be taken. The solution might be to have not one but two bodies, one dealing with civil and political rights, including non-discrimination and torture, and the other dealing with economic, social and cultural rights and others of similar nature.
21. Mr. KERDOUN recalled that the reform under discussion was in fact part of the Secretary-General's reform of the United Nations. It was not yet clear whether the Secretary-General's reform would precede reform of the treaty bodies or vice versa.
22. The proposal for a single treaty body was welcome, provided such a body continued to serve the Member States and the United Nations well. It was important to establish the position of the Member States, however. He also wondered under which parent body such a unified treaty body would be placed.
23. Mr. MALINVERNI said he supported the idea of reform; all institutions should undergo regular reform to reflect the changes that had taken place in the society around them. The treaty bodies had sprung up organically as the human rights instruments had been concluded and perhaps a saturation point had been reached.
24. A unified treaty body should be a standing body subdivided into two chambers, one dealing with State party reports and the other with individual communications - an embryo international court of human rights, as it were.
25. The main advantage of a single body was that it would cut down the duplication of work occasioned principally by the fact that the cross-cutting issue of non-discrimination in any given State party was currently addressed by all relevant treaty bodies in turn.

26. He did not agree with Mr. Sadi's suggestion of two chambers dealing with different types of human rights. It was important to reinforce the indivisibility of human rights - something, incidentally, that the current multibody system failed to do.

27. Juridically speaking, the simplest way to proceed would be to introduce a single protocol amending the treaty-monitoring provisions of all the conventions simultaneously. As to the composition of the committee, he would suggest a body of between 18 and 25 or 30 members, selected on a similar basis to the International Court of Justice or the International Criminal Tribunal.

28. Mr. MARCHÁN ROMERO said he was a founder member of the Committee and had been present at its first meeting in 1987. He well remembered how the establishment of the Committee had been seen as a major step forward for human rights, representing as it did the concrete recognition, for the first time, of economic, social and cultural rights.

29. For him the question of having one or several treaty bodies was one of visibility. Economic, social and cultural rights would be less visible if all rights were dealt with by the same body. The fact that new instruments came into being reflected the complexities of society and he did not see such diversity, or a multiplicity of treaty bodies, as problematic. On the contrary, the multiple approach allowed for greater specificity and he wondered whether a unified body could be as effective.

30. If the aim was to guarantee stakeholders' rights, he had two concerns. Firstly, what would become of the optional protocol to the Covenant? The Committee had spent many years raising awareness of the importance of an optional protocol and he greatly feared that that visibility would be lost.

31. Secondly, he wondered whether a single body would be able to maintain the specificity of several individual bodies either in respect of standard-setting - the work of interpreting the human rights instruments through, inter alia, general comments and recommendations - or with regard to the conclusions and recommendations formulated as a result of the consideration of State party reports.

32. Mr. SHEN Yongxiang said that he had not yet adopted a firm position on the proposed reform of the treaty bodies. He understood that the Office of the United Nations High Commissioner for Human Rights was engaging in consultation with non-governmental organizations, committee experts and government representatives, but it should be noted that among all the stakeholders, the views of Governments were most important, as they had the final decision-making power. Efforts should be made to avoid a scenario in which the proposal did not go ahead because of a failure to secure the support of a majority of Governments. He therefore suggested that meetings should be held with regional groups to make it possible to estimate how many Member States would support the proposal. If the conclusion was positive, the process could be started, while if it was negative, the Office of the High Commissioner should proceed more cautiously.

33. No one would challenge the purpose of the reform, which was to better protect rights-holders, but the various stakeholders had different concerns. For example, one consideration which would influence whether Governments supported the proposal was whether they would be allowed to submit a single report to the new, unified body.
34. As to the extent of reform, some advocated the adoption of a gradual approach, by firstly merging the Committee on Economic, Social and Cultural Rights and the Human Rights Committee. In his view, a thorough, single-step approach should be adopted, and the new unified body should consolidate all existing treaty bodies.
35. While the establishment of a unified treaty body would not increase the burden on Member States, fact-finding missions would increase their obligations. In terms of procedure, the establishment of a unified treaty body would require approval of an additional protocol by all Member States, as otherwise they would be regarded as withdrawing from the treaty.
36. He did not approve of the term “chamber”, which appeared to imply a judicial body.
37. Mr. KOLOSOV said that the only masters of international treaties were the States parties. He did not see how one intergovernmental conference could deal with the issue, as it would not have the competence to take a decision. Decisions should be adopted at meetings of the States parties to each instrument.
38. When ratifying international treaties, each State was aware of the rights and obligations it was undertaking. He wondered whether reform would not lead certain States to invoke the rebus sic stantibus clause. He was also concerned that by merging all of the treaty bodies, the individual specialization of each might be lost.
39. Mr. ABDEL-MONEIM said he agreed with the idea of establishing an international court for human rights. The problem was how to fit such a court into the current human rights machinery.
40. Mr. MARTYNOV agreed that the option of creating a unified body was a legitimate working hypotheses. However, he wondered whether there might not be other hypotheses to consider. He wondered whether that proposal had come from States parties, the United Nations system, academia or NGOs. He would be interested to hear whether other options were being discussed with States parties.
41. Mr. TIRADO MEJÍA agreed that it was necessary to explore whether the proposed reform was in fact the best option. It was important for the High Commissioner to be made aware of the differing opinions within the Committee. He welcomed the fact that the opinions of the independent experts were being requested, even if the decisions would be taken in the political domain.
42. He welcomed the fact that the reform was not being proposed simply for economic reasons, but rather to increase protection of human rights. Ratification differences within the human rights treaty body system should be borne in mind, as they could affect the legal and other aspects. Regardless of the type of reform, the plurality and diversity of representation of the treaty bodies should be maintained.

43. Mr. RZEPLINSKI said that he was in favour of the proposed reform, although it would take many years to complete. The idea of establishing one universal human rights body made sense, as human rights were universal and should not be divided between conventions or geographical regions. As to the membership of the proposed unified body, in his view, 20 or 30 members was too small, and 53, which was the current membership of the Commission on Human Rights, would be ideal, as it offered regional diversification and was a traditional number.

44. Ms. ARBOUR (United Nations High Commissioner for Human Rights) said that it was inevitable when launching a new process that all the answers could not be available at the outset. The question should be approached with an open mind, as it was possible that, in the course of discussion, a solution not originally envisaged would emerge as the preferred option.

45. As to the position of Member States, it appeared that they understood that in discussing issues of such complexity it was preferable not to express definitive opinions at the outset. Most Member States were open to examining the issues, without ruling out any possibilities. She could therefore not provide information on any particular position adopted by groups of States. The multiplicity of treaty bodies and attendant demands on States parties had created an environment in which there was support for reform, although it remained to be seen what the outcome would be.

46. The online consultations were only one of many efforts to reach out to the broadest possible constituency. Her Office would welcome any input or ideas through any mode of communication at any stage, to assist it in producing a concept paper; the more ideas were expressed, the richer the paper would be.

47. If the Commission on Human Rights was replaced by a human rights council, it would have to develop its own working methods, which would take many years. The Plan of Action proposed by her Office was intended to yield a considerable increase in capacity and mobilize resources in support of special procedures and treaty bodies. It was also hoped that the proposed human rights council would be stronger and more credible than the Commission, and that a reform of the treaty body system would result in a better support system for the protection and promotion of human rights. It was a very challenging, but also an exciting, time to be part of what was not yet the real third pillar of the United Nations system. She was very encouraged by the level of interest expressed by Committee members.

The meeting rose at 6 p.m.