



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/SR.2323
28 October 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Eighty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2323rd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 25 October 2005, at 3 p.m.

Chairperson: Ms. PALM (Vice-Chairperson)

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GENERAL COMMENTS OF THE COMMITTEE (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.2323/Add.1.

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The meeting was called to order at 3.05 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 8) (continued)

Draft revised general comment on article 14 (Right to a fair trial) (continued)
(CCPR/C/83/CPR.4/Rev.1)

Paragraph 11

1. Mr. KÄLIN said that he accepted the amendment proposed by Sir Nigel Rodley to the first sentence of paragraph 11, which would read: “The notion of ‘tribunal’ in article 14, paragraph 2, second sentence, designates a body that is established by law, is independent of the executive and legislative branches of the government, and generally enjoys judicial independence in deciding legal matters in proceedings that are judicial in nature” (CCPR/C/SR.2322). Mr. O’Flaherty had drawn attention to the erroneous use of the word “court”, in place of “tribunal” in the fifth and sixth sentences. That must be corrected. Notwithstanding the adoption of the United Nations Convention on Jurisdictional Immunities of States and Their Property (A/RES/59/38), he thought it necessary to mention sovereign immunity, as the concept continued to stand as an institute of international law and was a reason for people being prevented from bringing a case to court.
2. Mr. SHEARER asked why no mention was made of other kinds of immunity, such as diplomatic immunity. He proposed that a broader formulation be used, such as “to pursue legitimate aims such as the proper administration of justice or the observance of exceptions to jurisdiction in accordance with international law”.
3. Mr. LALLAH agreed with Mr. Shearer’s proposal. He proposed the addition of the words “in itself” in the last sentence of paragraph 11, so that it read “the right to access to a tribunal for the determination of rights and obligations in a suit at law does not in itself encompass a right to appeal”.
4. Mr. SOLARI YRIGOYEN supported the proposal made by Mr. Lallah.
5. Mr. KÄLIN accepted Mr. Lallah’s proposal. The optimum solution would be to use a broader formulation along the lines suggested by Mr. Shearer in conjunction with the example of immunity, which he felt it necessary to include in order to ensure that the Committee’s meaning would be clear even to non-specialists in international law.
6. The CHAIRPERSON said she took it that the Committee agreed to the proposed amendments to paragraph 11.
7. It was so decided.

The public part of the meeting rose at 3.15 p.m.