



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 717th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 May 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

GENERAL COMMENT ON ARTICLE 2

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE
CONVENTION (continued)

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

GENERAL COMMENT ON ARTICLE 2 (CAT/C/XXXI/MISC.2; CAT/C/GC/2/CRP.1; CAT/C/36/CRP.3)

1. Mr. MARIÑO MENÉNDEZ said that the adoption of a general comment on article 2 of the Convention had been on the agenda since 2003. By adopting the comment, the Committee would express an authoritative opinion on how it understood the obligations of States parties under article 2, a key part of the Convention. He had submitted a preliminary draft comment on article 2 (CAT/C/XXXI/MISC.2) in October 2003. It had been transmitted to other United Nations agencies and NGOs, some of which had provided valuable feedback. So far there had been no time to discuss the question in the Committee; nevertheless, his preliminary draft comment, the guidelines he had proposed in working paper CAT/C/36/CRP.3, the draft general comment No. 2 (CAT/C/GC/2/CRP.1) submitted by Ms. Gaer and the input from other sources could be used in drafting a finalized version of the text. In order to support the drafting process and involve new Committee members in the initiative, in his working paper he had suggested that a procedure and timetable should be established for the adoption of the general comment.
2. The drafting process should be accelerated and completed within a year, preferably by the following session. To ensure that the process was democratic, members were invited to submit additional ideas and proposals, within the following two months, to the working group that had been set up at the request of Ms. Gaer. The group would be entrusted with the preparation of a single integrated text, based on the existing documents. Further consultations might be required with third parties, including the Office of the High Commissioner and NGOs, with a view to improving the text. The finalized draft could then be submitted to the Committee for adoption at the following session. The working group's methods of work could be discussed either in the Committee or within the group itself.
3. He had endeavoured to delineate the essential issues. Article 2 of the Convention contained three paragraphs, each of which was autonomous. It should be borne in mind that the Convention was an integrated text with many cross-references to other articles. One point consistently emerged from the comments received from the various organizations: articles 2 and 16 were closely interlinked, sometimes making it difficult to draw a clear distinction between torture and other forms of cruel, inhuman or degrading treatment.
4. A core element of article 2 was the absolute prohibition of torture and cruel, inhuman or degrading treatment. That was an essential component of the general comment. Cross-references might be made to other international legal instruments. The content of the obligations imposed on States parties by article 2, paragraph 1, should be indicated, including effective measures to be taken to prevent torture and other inhuman treatment. For example, what was the content of the following obligations: the obligation to incorporate the definition contained in article 1 of the Convention in domestic legislation; the obligation to prevent acts of torture by individuals; and monitoring obligations on the part of the State, particularly in private detention centres? Should specific violations be indicated, as suggested by some NGOs, with reference to incommunicado detention and forced disappearances? There was also the question of extraterritoriality and the application of the Convention in any location, whether on territory

within the jurisdiction of a State party or on territory under the control of a State party. Other issues which must be addressed included the applicability of the Convention in armed conflicts and the complicity of States. Ms. Gaer had also referred to the principle of non-discrimination.

5. Paragraphs 2 and 3 of article 2 would have to be dealt with separately, in the light of their proscriptive nature. Torture could not be justified in any circumstances; that should be one of the less difficult points to address.

6. He considered that it would indeed be appropriate to adopt a general comment on article 2. That would help the Committee in its work and strengthen the absolute prohibition of torture and cruel, inhuman or degrading treatment, which was the objective of the Convention.

7. The CHAIRPERSON considered that the lack of work done thus far on the general comment was regrettable. He agreed that it would be desirable to adopt the general comment at the following session.

8. Ms. GAER recalled that in November 2001 a letter had been sent to the States parties reiterating certain obligations imposed on them by the Convention. It had stressed the absolute prohibition of torture and cruel, inhuman or degrading treatment, and the fact that orders from a superior officer could not be invoked as a justification of torture. Certain questions had also been raised concerning language, territory and jurisdiction, inter alia.

9. As to the organization of work on the general comment on article 2, for practical reasons the working group that had been set up had never been able to meet. As a result, she had decided at the previous session to prepare draft general comment No. 2 entitled Implementation of article 2 of the Convention by States parties. The title appearing on the document distributed by the secretariat (CAT/C/GC/2/CRP.1) was erroneous, since the issue at hand was not the adjudication of cases in the context of article 22. It was also unclear to her why the paper submitted by Mr. Mariño Menéndez (CAT/C/36/CRP.3) restricted the scope of the general comment to “article 2 as it relates to article 16”, which did not reflect the discussion in the Committee.

10. Her draft general comment had neither been translated and distributed to members, nor posted on the website, nor discussed intersessionally despite what had been agreed at the previous session. Another problem stemmed from the fact that the preliminary draft submitted by Mr. Mariño Menéndez had been transmitted to other organizations and selected NGOs prior to any consultation with Committee members. She had prepared the draft general comment in the light of the Committee’s jurisprudence, considering that it should reflect the actual work of the Committee rather than interpretations by individual members of what the Convention should have covered. She would welcome an updated draft of the working paper submitted by Mr. Mariño Menéndez so that it might provide a basis for work on the general comment. She agreed that producing a finalized draft was a matter of urgency, and preferred not to delay the process until the following session. In addition, for practical purposes, she suggested working with the Committee as a whole rather than in a working group. Once the text had been thoroughly discussed in the Committee, it could be forwarded to third parties for their observations.

11. On the substance of the general comment, paragraph 2 of the paper submitted by Mr. Mariño Menéndez suggested that each paragraph of article 2 should be related to article 16. In the draft general comment that was covered in paragraph 12, first subparagraph. Reference was made to the overlap between the obligation to prevent torture under article 2 (1) and the obligation to prevent cruel, inhuman or degrading treatment or punishment under article 16. The conditions that gave rise to cruel, inhuman or degrading treatment had much in common with those which gave rise to torture. Thus preventive measures must address both. In her view, the second subparagraph of paragraph 12 illustrated paragraph 2 (1) of the Convention more explicitly than paragraph 2 of the working paper. A statement that cruel treatment could not be justified by orders from a superior officer could be added. Paragraph 3 of the working paper, concerning absolute prohibition, was covered by paragraphs 21 and 22 of the draft general comment. Paragraph 4 of the working paper had a series of subparagraphs, each of which was already reflected in the draft general comment. Paragraphs 6 and 7 of the draft general comment argued for compulsory incorporation of the definition of torture, in accordance with the Convention's definition, into domestic law. A serious problem lay in the persistent refusal by so many States parties to comply with that obligation. It must be tackled in the context of a general comment on article 2.

12. She welcomed the reference in paragraph 4 (a) of the working paper to the obligation to incorporate the definition contained in article 1 of the Convention at all levels of the State or federation, as it supplemented the information on territorial responsibility contained in paragraph 18 of the draft general comment. Information on the content of the obligation to prevent acts of torture, and the obligation to monitor private detention centres (working paper, para. 4 (b)) was covered by paragraphs 3, 4 and 5 of the draft general comment. The commission of acts of torture by individuals was covered in paragraph 10. In her view, the term "individuals" was inappropriate for describing de facto State officials. The need to spell out the basic guarantees (*ibid.*, para. 4 (c)) was covered in paragraphs 3 to 5 of the draft general comment. Providing examples would make the document excessively long. She did not agree with the proposal to identify "typical violations" (*ibid.*, para. 4 (d)), as they might subsequently be interpreted as priorities and thus potentially narrow the range of the Committee's activities. While the scope of the Convention and its applicability during armed conflicts (*ibid.*, para. 5) were covered in paragraph 18 of the draft general comment, more information on the issue of armed conflict in paragraph 18 would provide greater clarification. In particular, she would welcome the inclusion of the information relating to amnesty or general pardon. The issue of complicity of States (*ibid.*, para. 6) was addressed in paragraph 11. The issue of vulnerable groups and the relevance of the principle of non-discrimination (*ibid.*, para. 7) were covered by paragraphs 13 to 17. It would be advisable from a gender perspective to separate the categories of women and children, and to add other appropriate vulnerable groups.

13. She questioned the value of referring to other articles of the Convention (*ibid.*, para. 8), although the issue of public education was covered by paragraph 19 of the draft general comment. Article 2 itself involved every article of the Convention and could be interpreted very broadly. However, the focus of the general comment must be on the Committee's application and interpretation of effective measures, and responsibilities for States, based on its own experience, recommendations and jurisprudence. Article 2, paragraph 3, of the Convention, relating to orders from a superior (*ibid.*, para. 9), was covered in paragraph 23. She would be in favour of including, in paragraph 23, the comment Ms. Sveaass had made at a recent meeting on the subject of whistle-blowers.

14. The issue of States parties withdrawing their reservations to the Convention (*ibid.*, para. 10) was being dealt with separately, and she was uncertain whether it should be included in the general comment. Other issues could be added, such as sexual violence, forced nakedness and body cavity searches. In general, the Committee could discuss the ways in which its interpretations of the specific meaning and intent of the text had evolved.

15. She suggested that her proposed text of the general comment be revised to take into account the proposals made, and discussed on the penultimate day of the session, before possibly being forwarded to other stakeholders for their views. That would enable the Committee to expedite its work at the thirty-seventh session.

16. Replying to the question raised by Mr. Mariño Menéndez, she confirmed the Committee's clear support for a general comment. While the appropriateness of starting with article 2 was uncertain, that had been the approach adopted. In her view, the Committee was in a position to provide, on the basis of its copious experience, findings, jurisprudence and observations, an authoritative interpretation of States' obligations under article 2. It was important that the views expressed in the general comment be based on those findings and jurisprudence, and on the Convention's actual meaning - not on aspirations concerning its potential or desired meaning.

17. In her view, the working group should be disbanded. Incorporating the suggestions made by Mr. Mariño Menéndez into the draft general comment, along with any changes other members would like to suggest, would provide a good basis for discussion.

18. It was obviously clear to all members that the Committee's objective was the complete eradication of torture and other cruel, inhuman or degrading treatment or punishment. A sense of urgency was therefore required in the Committee's discussion of the suggested elements of the draft general comment.

19. Mr. MARIÑO MENÉNDEZ said that while a sense of urgency was indeed required, it would be impossible to carry out the necessary work in the space of two days, especially in view of the material from NGOs, which some members had not seen. More time was required in order to produce a well-drafted general comment. While the text presented by Ms. Gaer had been useful, she had not addressed all the points he had made. His preliminary draft comment (CAT/C/XXXI/MISC.2, dated 16 October 2003) had not been discussed, and he was surprised that Ms. Gaer wished to disband the very working group she had originally called for.

20. Ms. BELMIR wondered whether, in the context of the observation that article 2 involved every article of the Convention, and bearing in mind the absolute prohibition of torture, reference should not be made to the other international human rights instruments. For example, the interpretation by some States and human rights experts of article 4 of the International Covenant on Civil and Political Rights was inconsistent with the absolute prohibition of torture, for example in cases of public emergency. To what extent was there complementarity between the provisions of the two instruments? Could the Convention alone confer the necessary protection?

21. In her view, some of the suggestions made by the Committee to States had been rather inflexible. Was it not possible to take greater account of the situation of individual States, and particularly problems relating to the cost of implementing the Convention? Similarly, in her

experience, the provisions concerning orders from a superior were difficult to implement. To what extent did the Committee take into account the problem of civil servants potentially losing their jobs if they challenged such orders?

22. The CHAIRPERSON suggested that clarification of the points raised should be provided in the draft general comment. Replying to the question concerning article 4 of the International Covenant on Civil and Political Rights, he said that, in addition to the lex specialis nature of the Convention, article 4 of the Covenant prohibited any derogations from, inter alia, article 7, which expressly prohibited torture or cruel, inhuman or degrading treatment or punishment.

23. He hoped that the Committee would decide on the best way to work, with the aim of producing a final text by May 2007.

24. Ms. SVEAASS endorsed the need for a clear time limit and plan of work. She sought clarification of the main differences between the documents being discussed, and of the main issues that needed to be addressed. With regard to Ms. Gaer's comment, she wondered whether the Committee's jurisprudence, instead of being in contrast to its aspirations, could not also reflect them.

25. Mr. WANG Xuexian requested that the draft general comment be translated into all the official languages. While agreeing on the urgency of the task at hand, he said that the Committee's interpretation of implementation of the Convention must be authoritative and take into account not only its own views, but also those of civil societies and Governments. Following on from Ms. Belmir's comments about problems experienced by countries in implementing the Convention, he raised the issue of amnesty, which, in the Committee's view, should not be granted in relation to acts of torture. It was in the supreme interest of some countries, however, to grant such amnesty - for example in South Africa, for the purposes of national reconciliation. Were the Committee's rulings to be applied irrespective of a country's particular circumstances? While it was true that the prohibition of torture was absolute, implementation of the Convention was in some cases problematic, and the general comment should reflect that.

26. Mr. CAMARA said that a member's request for a matter to be discussed in a general debate must be agreed to. The working group should now be disbanded and all the documents prepared translated into all the official languages. It was, however, not possible to fix a specific time frame for the work in question.

27. Mr. KOVALEV sought clarification of the Committee's objective in drafting a general comment on implementation of article 2. Maybe a text could be prepared on the Committee's understanding of all the articles of the Convention?

28. Mr. MARIÑO MENÉNDEZ thanked members for their useful contributions to the debate. In reply to Mr. Kovalev's question he said that it would be neither practical nor useful to issue a general comment relating to the Convention as a whole. Established practice was that general comments related to specific articles, providing an authoritative interpretation of States' obligations.

29. The Committee needed to be realistic in its aspirations; States would not necessarily implement the provisions of the Convention to the extent desired by the Committee. The practical realities involved were understood by NGOs. The Committee could, however, make observations based on practice, which were useful for States and in some cases expressed new points of view. It would be interesting to discuss the issues of cost and orders from superiors raised by Ms. Belmir, and the issue of amnesty raised by Mr. Wang Xuexian. Referring to the lack of clarity mentioned by Ms. Sveaass, he explained that his preliminary draft comment had not been discussed but had been commented on by NGOs. Ms. Gaer had then submitted another document, which had not been discussed either, and now she was submitting another one.

30. With regard to the distinction between jurisprudence and aspirations, sometimes there was no jurisprudence, as Ms. Belmir had said. He agreed that it could be useful to refer to other legal instruments relating to the issue of torture.

31. What the Committee required was a text for discussion, possibly containing options within brackets, translated into all official languages. For that, he envisaged a time frame of a few months rather than a few days. To that end, he would be happy to work with Ms. Gaer by e-mail.

32. Ms. GAER said that her proposal to complete work on a draft general comment before the end of the session was perhaps too ambitious, but she had wanted to respond to the very specific points raised by Mr. Mariño Menéndez. She expressed appreciation for the comments and suggestions made by other members, particularly Ms. Belmir and Mr. Wang Xuexian. Mr. Kovalev's suggestion would be difficult to implement in view of the limited time available. The procedure agreed upon during the previous session was that the rapporteurs should finalize their draft of the general comment, taking into account members' suggestions before circulating it to elicit comments from NGOs. She was disappointed that, despite the advance warning given of the scheduling of the current agenda item in a public meeting, only one NGO (Amnesty International) had attended. She sought the advice of the Chairperson and Committee members as to how to proceed, expressing the hope that more meeting time would be allocated to the subject during the current session.

33. The CHAIRPERSON said it would be difficult to allocate more time to the subject before the end of the current session without jeopardizing the consideration of other agenda items. Clearly the efforts of the drafting group had not been wholly successful, but the Committee needed a draft document on which to base further discussion, with as few unresolved problems as possible.

34. He proposed that Ms. Gaer and Mr. Mariño Menéndez should try, via e-mail, to reach agreement on a draft consolidated document within the next month. The secretariat would provide the necessary assistance.

35. Ms. SVEAASS said she would have found it easier to contribute to the discussion if the working paper prepared by Mr. Mariño Menéndez had dealt with the three paragraphs of the article separately.

36. Mr. MARIÑO MENÉNDEZ said that the original idea had been to deal with the three paragraphs separately. However, they were generally viewed in the treaty body system as a set of provisions, with article 2 (1) being the key provision; he had therefore considered it more appropriate to deal with them together.
37. Ms. GAER said that a more feasible deadline for completion of the draft consolidated document would be six weeks.
38. The CHAIRPERSON proposed that the secretariat should provide assistance to the rapporteurs on translation and other problems relating to the draft document. It would then be circulated to members of the Committee; if within one month they had submitted no comments, it would be assumed that the document met with their approval. The document would be submitted to the November 2006 session for discussion.
39. Mr. MARIÑO MENÉNDEZ agreed with Ms. Gaer that six weeks was a more reasonable time frame. He stressed the importance of assistance from the secretariat and enquired whether a staff member from the secretariat could be made available for that purpose.
40. The CHAIRPERSON proposed that the document should not be circulated to NGOs for comment. He expressed concern that it might delay the whole process.
41. Ms. MORALES (Secretary of the Committee) said it would be useful to know in advance exactly what type of assistance was required. She expected that two staff members could be assigned to assist the rapporteurs on an ad hoc basis.
42. The CHAIRPERSON suggested that the secretariat should coordinate the translation of the document and draw on its experience to help resolve any outstanding problems or make any other useful suggestions as required.
43. Mr. WANG Xuexian endorsed the proposed time frame for drafting the consolidated document, but requested that the final draft should be circulated to members at least two weeks before the start of the next session.
44. Ms. MORALES (Secretary of the Committee) said that by the beginning of July the rapporteurs should have finalized their consolidated document incorporating suggestions from the secretariat. The document would then be sent for translation and, if everything went according to schedule, it would be ready for distribution in September. It would then be circulated to members for their comments, which should be submitted within one month. That would leave approximately only one month for any further translation or editing required before the November session. The secretariat would endeavour to meet that deadline but it was rather tight.
45. Ms. SVEAASS said that although the draft general comment and the working paper had many points in common that could easily be merged in a consolidated document, there were other issues which required further discussion and clarification. If some meeting time was allocated for that purpose before the end of the current session, it would undoubtedly be beneficial for the rapporteurs and other members alike.

46. Mr. CAMARA agreed with Ms. Sveaass. A brainstorming meeting before the closure of the current session would be very useful. He particularly wished to discuss the need to draw a distinction between articles 1 and 2 of the Convention as they related to article 16. He did not endorse the approach adopted by Mr. Mariño Menéndez in that connection.

47. The CHAIRPERSON said that, if possible, one hour would be allocated in the programme of work for that purpose before the closure of the current session. He took it that the Committee wished to adopt his proposal for a consolidated document on article 2.

48. It was so decided.

The meeting was suspended at 12.05 p.m. and resumed at 12.20 p.m.

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION (agenda item 9) (continued)

49. The CHAIRPERSON invited the Special Rapporteur to introduce the report on follow-up activities (document without a symbol) relating to the Committee's decisions on complaints submitted under article 22 of the Convention.

50. Mr. MARIÑO MENÉNDEZ, Special Rapporteur on Follow-up, summarized the comprehensive report on replies received with regard to all cases in which the Committee had found violations of the Convention and one case in which it had not found a violation but had made a recommendation.

51. It was proposed to send reminders requesting information or updates to the following States parties with regard to the specified communications: Austria (Halimi-Nedibi Quani, 8/1991); Canada (Tahir Hussain Khan, 15/1994; Falcon Ríos, 133/1999); France (Brada, 195/2003); Netherlands (A, 91/1997); Serbia and Montenegro (Ristic, 113/1998; Hajrizi Dzemajl et al., 161/2000; Nikolic, 174/2000; Dimitrijevic, Dragan, 207/2002); Spain (Ecaración Blanco Abad, 59/1996; Urra Guridi, 212/2002); Sweden (Tharina, 226/2003; Agiza, 233/2003); Venezuela (Chipana, 110/1998).

52. In the case of Dadar v. Canada (258/2004), a note verbale had been sent to the State party on 13 March 2006 expressing concern that the complainant was to be deported to Iran despite the Committee's decision concerning Canada's obligations under article 3 of the Convention. Following the complainant's deportation on 26 March 2006, a second note verbale had been sent to the State party on 31 March 2006, expressing concern at the precedent set by Canada in failing to abide by the Committee's decision on the merits of a case submitted and duly considered under article 22 of the Convention, asking to be informed by the State party of any measures taken to ensure the complainant's safety on arrival in the Islamic Republic of Iran, including the establishment of any monitoring mechanism through the State party's consular offices, and requesting information in due course on the complainant's well-being. Was the Committee agreed on the dispatch of a further note verbale to the State party, deploring its failure to comply with the terms of article 3, reminding it of its corresponding obligations, and requesting it to establish a monitoring mechanism whereby Canadian representatives would have direct contact with the complainant?

53. Mr. CAMARA expressed reservations about the dispatch of such a note, which might establish a precedent whereby States parties would consider their obligations under article 3 limited to establishing a monitoring mechanism following the deportation of a complainant. He thought that the Committee should inform the State party that it had violated article 3 and should include that information in its annual report.

54. Ms. GAER said that, at the time of the complainant's deportation, the State party had maintained that the complainant was well and that there was therefore no need for a monitoring mechanism. It had never been suggested that such a mechanism would fulfil the State party's obligations, and it was for the Committee to determine what further follow-up measures should now be taken.

55. The CHAIRPERSON, endorsing the views expressed by Mr. Camara, said that any written communication to the State party should stress the need to comply with the Committee's decision. Other issues could be discussed verbally at a meeting with the representatives of Canada.

56. Mr. MARIÑO MENÉNDEZ agreed that the note to the State party should not refer to possible follow-up measures. Issues such as monitoring, compensation for violation of the Convention and guarantees of future compliance could be discussed at a meeting with the State party's representatives, at which Ms. Gaer might represent the Committee.

57. Ms. GAER said she wished to place on record her concern that, for the first time, a State party had refused to comply with a decision of the Committee on the merits of a complaint. She considered the matter to be particularly serious since Canada had always cooperated very actively in the implementation of the Convention. The Committee would have to determine its substantive response at a subsequent meeting.

58. The CHAIRPERSON suggested, in keeping with the views expressed, that the note verbale to the State party should seek a meeting with its representatives while making no reference to any follow-up measures.

59. It was so decided.

60. Mr. MARIÑO MENÉNDEZ, summarizing the information provided to the Committee on cases 63/1997 and 195/2003 involving France, drew attention to the State party's expression of surprise at the follow-up measures decided by the Committee, which it characterized as having been "put in place by a mere change in the rules of procedure".

61. Ms. GAER said that the surprise expressed by France carried with it the implication that States parties recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction were not obligated to comply with interim measures decided by the Committee under article 22 of the Convention. The issue, which had been implicit in responses from other States parties, was sufficiently important to merit a letter or comment setting out a consolidated position on the status of interim measures and the corresponding obligations of States parties.

62. The CHAIRPERSON suggested that the secretariat should ascertain whether the same problem had arisen in relation to other human rights treaty bodies, with a view to working out a common stance on the question.
63. Mr. MARIÑO MENÉNDEZ, noting that France had so far simply expressed surprise and had not refused to provide information, suggested that future requests to the State party for updated information should include a general reminder, without specific reference to France, that the Committee was exercising legitimate powers under article 22 of the Convention.
64. Ms. BELMIR wondered whether the State party's attitude might reflect the fact that France identified more closely with the European Convention on Human Rights, whose provisions were binding and tended to be followed to the letter.
65. Mr. MARIÑO MENÉNDEZ noted that the European Convention was underpinned by the mandatory judgements of the European Court of Human Rights and by the Committee of Ministers of the Council of Europe. While the Committee's decisions were not strictly mandatory, States parties had an obligation to comply with them in good faith. The Committee should resist attempts to challenge the practice of following up decisions, which was well established in customary law.
66. The CHAIRPERSON, endorsing the views of Mr. Mariño Menéndez, said that the Committee must assert its follow-up powers, failing which it would become a mere forum for the informal exchange of opinions.
67. Mr. MARIÑO MENÉNDEZ said that, in the absence of information from either the State party or the complainant, he would like the secretariat to ascertain the status of case 91/1997 involving the Netherlands. In case 113/1998 involving Serbia and Montenegro, updated information was required from the State party to confirm that it had effectively acknowledged a violation of the Convention through the payment of compensation to the complainant's parents.

The meeting rose at 1 p.m.