



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1273rd MEETING

Held at the Palais des Nations, Geneva,  
on Monday, 25 October 1993, at 10 a.m.

Chairman: Mr. ANDO

CONTENTS

TRIBUTE TO THE MEMORY OF Mr. JÁNOS FODOR

ORGANIZATIONAL AND OTHER MATTERS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT

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The meeting was called to order at 10.20 a.m.

TRIBUTE TO THE MEMORY OF Mr. JÁNOS FODOR

1. The CHAIRMAN said that it was his sad duty to inform members that their colleague, Mr. János Fodor, had died during the previous weekend. He had already called Mrs. Fodor and informed her of the sense of loss and grief felt by all the members of the Committee.
2. On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. János Fodor.
3. Ms. EVATT, Mr. LALLAH, Mr. AGUILAR URBINA, Mr. SADI, Mr. MAVROMATTIS, Mr. DIMITRIJEVIC, Mrs. HIGGINS, Mr. FRANCIS, Mrs. CHANET, Mr. PRADO VALLEJO, Mr. POCAR, Mr. WENNERGREN, Mr. BRUNO CELLI and Mr. NDIAYE as well as Mr. HOUSHMAND, Mr. MOLLER, Mr. SCHMIDT and Mr. TISTOUNET on behalf of the Centre for Human Rights, made statements in which they paid tribute to the memory of Mr. János Fodor.
4. The CHAIRMAN said that the text of the statements would be sent to the family of the late Mr. János Fodor.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

5. The CHAIRMAN announced that the arrival in Geneva of the delegation of the Libyan Arab Jamahiriya had been delayed because of air transport problems and the Committee would therefore be unable to take up the country's second periodic report at the current meeting as had been planned. He proposed that the Committee should instead start its consideration of the draft general comment on article 27 of the Covenant under item 4 of its agenda.
6. It was so decided.

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

Draft general comment on article 27 of the Covenant on Civil and Political Rights (CCPR/C/49/CRP.1)

7. Mr. LALLAH, introducing the Working Group's draft general comment on article 27, said that, as members would recall, article 27 had presented the Committee with great difficulties in the past. A first draft had been produced in the mid-1980s and had been considered by the Committee but it had been difficult at that time for the Committee to take a comprehensive view. The Committee had accordingly felt that it ought to have the benefit of experience in dealing with both State reports and communications before studying the matter further. Against that background the current draft had been prepared.
8. The general approach the Working Group had adopted was clear. In paragraph 1 the Working Group dealt with what article 27 in fact said. In paragraph 2 it dealt with the confusion that had been apparent in some communications between article 27 rights and the right of peoples to self-determination proclaimed in article 1. That theme had been further developed in

paragraph 3. Paragraph 4 dealt with the confusion arising, mainly in communications, between article 27 rights and the rights to equality and non-discrimination and equal protection under the law provided under articles 2 and 26.

9. In paragraph 5 the Working Group had tackled a number of problems associated with the article. In paragraph 5.1 it had examined the issue of identifying the minorities that were protected under article 27 and considered whether such protection applied only to citizens of the State party or to any individual within its territory. In paragraph 5.2 the Working Group had considered the question of the existence of minorities and had taken the view that the degree of permanence connoted by the term “exist” was irrelevant. The existence of a minority needed to be established by objective criteria, not by a unilateral decision by a State party. In paragraph 5.3 questions relating to language rights had been examined. Language rights under article 27 had been distinguished from other language rights protected under the Covenant, particularly in article 14, paragraph 3 (f). The discussion had been continued in paragraph 5.4.

10. In paragraph 6 the Working Group dealt with measures that States parties were obliged to take under article 27 in order to safeguard the rights conferred under the article. That aspect had been dealt with in paragraph 6.1 and again in 6.2 and reference had been made to the further test of non-discrimination.

11. Paragraph 7 examined the question of the protection of cultural rights and the way of life of minorities and suggested the positive legal measures of protection might be required. In paragraph 8 the Working Group emphasized that despite the limited nature and scope of the rights conferred on the individual by article 27, the rights were valuable and needed to be protected to ensure the survival of minority groups. Confusion with other personal rights might, it was suggested, jeopardize recognition of minority rights by society.

12. The Working Group had appended a number of footnotes referring to available material. That was not the general practice and had been done simply for the purpose of indicating to members where ideas had come from.

13. The CHAIRMAN invited the views of members on the draft general comment as a whole.

14. Mr. SADI, speaking as a member of the Working Group, thanked Mr. Lallah for his excellent presentation. The only matter of concern to him was that up to now there had been no definition of a minority; that had always posed a problem. Even in the draft, the Working Group had avoided any attempt at definition. That of course posed a problem when States parties appeared before the Committee denying the existence of a minority in their country. He did not know whether it would be appropriate even to attempt to make a definition of what a minority was. The Committee seemed to gloss over the issue and to define a minority by distinguishing it from other phenomena. The issue had been discussed in the Working Group and the latter had decided not to attempt a straightforward definition at the present stage.

15. Mr. WENNERGREN expressed his thanks to the Working Group and to Mr. Lallah. The issue was a very difficult one and he was surprised that the Working Group had been able to produce a text so soon.

16. One key point perhaps required greater emphasis than it had been given. That was that all the rights in article 27 referred to rights that were exercised in community with other members of the minority group. He felt that that point should be emphasized in a separate paragraph. The Committee would thus be helped to identify the rights specific to article 27 and those that belonged under other articles in the Covenant, for example, the language right specified in article 14, paragraph 3 (f). That provision did not refer to the use of the language in community with others and fell outside article 27. If the Committee concentrated on an analysis of what it meant to exercise the right in community with other members of the Group, formulation of the comment would be facilitated and it would be easier for States parties to understand how article 27 had been built up.

17. Mr. BRUNI CELLI remarked that under article 27 the State had an obligation not to do something. The article did not prescribe an obligation to safeguard the rights of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion or to use their own language. In a number of Latin American countries, minorities were, generally speaking, indigenous peoples. They were not deprived of their rights by reason of State policies which did not respect those rights. They suffered from interference in their affairs by religious sects or by economic groups interested in modifying the cultural environment with a view to exploiting land or mineral deposits.

18. He would like to see the general comment devote attention to the issue of the State's obligation in regard to such threats to minorities.

19. Mr. MAVROMMATIS said that the text was impressive. It took a specific article of the Covenant and attempted to give substance to rights which needed further elucidation. It covered much ground and would in all likelihood lead to a formula that would be encapsulated in future conventions. It rightly referred to work that had been done regarding indigenous and other minorities.

20. He wished to make two points. First, should the emphasis be placed on what article 27 was not or what confused thinking had implied it to be? Second, he agreed with Mr. Wennergren that the general comment should lay greater emphasis on the issue of community with others. Paragraph 3.3 struck a fair balance between article 27 rights and self-determination, which was a very difficult problem. In his view the last clause in the second sentence of paragraph 3.3 could be deleted.

21. He expressed the hope that with a draft of such high calibre before it the Committee would quickly reach a consensus.

22. Mrs. CHANET, welcoming the draft, said that the Working Group had been faced by many problems, the first being whether or not to attempt a definition of the term minority. Mr. Lallah had been wise to refrain from that task.

23. The draft had achieved a delicate balance in paragraphs 2 and 6.1. As paragraph 2 noted, some States confused the right to non-discrimination with the right protected under article 27. A number of States considered that a minority did not exist unless all three elements - ethnic, religious and linguistic - were present.

24. A second concern was how to solve the problem arising from the negative wording of article 27 which stipulated only that persons belonging to minorities should not be deprived of the rights protected. Positive steps were needed.

25. Mr. POCAR said that Mr. Lallah's excellent draft effectively drew on the experience the Committee had gathered over the years from reports and individual communications.

26. The issue of finding a balance between the rights of people belonging to minorities and the rights belonging to all individuals in the State in which a minority existed had not been sufficiently developed in the draft and called for further discussion. The issue was a delicate one as it involved the question of how far a State could go to protect minorities without reducing the protection of the rights established under the Covenant for every individual.

27. He agreed that affirmative action was permissible and in that connection the draft should perhaps go beyond what was stated in paragraph 6.2 where the reference to affirmative measures was extremely cautious.

28. The question of how to deal with the education of minorities required further exploration. The provision of schools for minorities, in which the language of the minority would be used and where the language and history of the minority could be studied in relation to society as a whole, was most important as a means of strengthening the identity of minorities and furthering the development of a good relationship between members of the minority and other individuals living in the State.

29. The Committee should bear in mind that the General Assembly had recently adopted a Declaration on the rights of people belonging to minorities and that that Declaration had been based on article 27 of the Covenant. The General Assembly of course was not completely bound by article 27 and could go beyond the article but the Committee should be careful to check its comments against the Declaration in order to ensure that it had covered the points contained in the Declaration. It would be particularly important to see whether anything in the Declaration was not within article 27. The Committee must however ensure that an issue was not covered by article 27 before leaving it out of its general comment.

30. Mr. PRADO VALLEJO observed that when the Committee had discussed aspects of article 1 of the Covenant, it had been deeply divided. The relationship between self-determination and minority rights required examination in greater depth. Paragraph 3 of Mr. Lallah's draft touched on the point when it stated that self-determination, not being a right conferred on individuals as such, was not a right the violation of which was cognizable under the Optional Protocol, whereas the violation of a right under article 27 was so cognizable.

31. After examining many reports he had concluded that a number of States, as a matter of national policy, did not recognize that minorities existed and did so in order to avoid having to recognize minority rights. Such decisions were arbitrary and politically motivated and caused confusion in the interpretation of the Covenant, leading the States concerned to take a stand against minorities.

32. Article 27 stated that persons belonging to minorities should not be denied certain rights. In his view, however, the Committee should go further and should say that those rights should be safeguarded for minorities so that they could not be denied them and could freely pursue their cultural and linguistic life and their religious beliefs and political organization. In that connection he would like to mention that his own country had provided for the political organization of the Indians.

33. Ms. EVATT noted that the reference in article 27 to the right to exercise the right protected in community with others was not unique. Article 18, for example, also spoke of freedom to manifest religion or belief individually or in community with others. While the article was concerned with the freedom of the individual to maintain his or her distinctive cultural characteristics, the group itself must maintain its culture, language and religious character so that the individual would enjoy his or her right in community with others. In some situations that might mean that the State must shoulder a positive obligation to take measures that would enable the individual and the group to maintain their identity. The alternative might be erosion of the group's language and culture, which indirectly would gradually deprive the individual of his personal rights. The problem was, of course, to find the right balance. Where must the State stop? At what point must the State go one step further than merely refraining from undermining a right and instead do something positive to enable a community to bolster its desire to maintain its own language, culture or religion so that individual members of the community could continue to enjoy their individual rights?

34. Another problem arose where the legal system itself created barriers to the expression of cultural identity or created special problems for people with certain beliefs or traditions. The question then was how to ensure that individuals might continue to enjoy the rights protected under article 27.

35. She felt that it might also be necessary to make a more positive statement about the inclusion of indigenous peoples under article 27. She noted that the Vienna Declaration had emphasized the public and private aspects of the enjoyment of minority rights. That was also something the Committee might wish to look at.

36. Mrs. HIGGINS said that it was important that the Committee should produce a good general comment and do so quickly for two reasons. The first was the repeated practice of some States which came before the Committee and maintained that they had no minorities. The second was the fact that the Human Rights Committee was the treaty body that had minority rights in it. The Committee was the guardian of those rights but in fact other treaty bodies as well as political bodies that had no such rights in their constitutional arrangements were busy pronouncing upon the issue in a manner which, in her view, was rather damaging. She was referring in particular to the drafts currently circulating in the Council of Europe system and the CSCE. She believed that it was high time for the Human Rights Committee to regain its territory as the guardian of article 27. What was particularly worrying about the Council of Europe drafts, of which there were four or five, was that there was in them a total confusion between self-determination, non-discrimination and minorities. As a result the drafters became concerned about the scope to the drafts and in consequence limited those to whom the right would be available. She was gratified to note that the draft before the Committee dealt with those important issues.

37. Regarding the point made by Mr. Sadi, while it was true that all members were aware that the attempts of the Committee at definition had led to failure, some members, including herself, had been tempted, on hearing States say that they had no minorities, to ask them how they knew they had no minorities. She wondered whether a paragraph covering that point could be added with a view to clearing the matter up. What she had in mind was that the Committee might say to States that, if a majority of persons within a State adhered to a certain religion or culture or together used a certain language, then those who adhered to a different religion or culture or together used a separate language, constituted minorities within the meaning of article 27.

38. The Committee would have to be very careful when distinguishing minority rights from other rights if it was to avoid embarking upon a general commentary on the array of other rights. The problem was very complicated and she was not sure that the draft had got that issue quite right. She would also like to suggest that a paragraph might be inserted to the effect that the State must educate for tolerance of minorities. She believed that one of the positive duties of a State was to educate the majority so that the minority might be respected and might enjoy its rights. She agreed with Mr. Pocar that the Committee should probably also say something about minority schools as such.

39. The draft had taken the position that the measures should not be limited to nationals. That was an extremely important point and it brought to mind another bad aspect of the European drafts which should be addressed. That was not only the limitation to nationals but the limitation to concentrations of minorities so that it would appear that rights were only available when certain numbers were gathered together in one area of the country. The Committee should speak very clearly on that point. It should not be necessary to live in a particular area with a minority population in order to have minority rights. If two or three persons wanted to use their language or culture together they were absolutely entitled to do so.

40. In conclusion she could see that the Committee would be faced by two truly difficult issues. The first concerned the relationship, to which Mr. Bruno Celli had referred, of indigenous rights to the generality of minority rights. That was a particularly difficult topic and she felt that all members should ponder what the Committee's position should be. The other especially difficult topic was what she would call the second form of positive measures. The draft correctly stated that, although article 27 was cast in negative terms, there existed a positive obligation to make sure that a denial of rights did not occur. There should be a requirement for positive measures to be taken with a view not only to preventing denial of rights but also to assist in improving the situation of minorities.

41. Mr. NDIAYE said that his chief concern lay in the fact that the draft as it stood avoided the most difficult question raised by article 27 in so far as it made no reference to the concepts on which States based themselves when they claimed they had no minorities. There was no mention of national minorities whereas, in practical terms, there were in most States minorities which were national and minorities which were not national. In his view the duties of States towards national minorities were much more important than their duties to minorities which were not national. He could not for example consider transients to be minorities. When the Committee considered State reports there should be some comment on that issue.

42. A further important question not addressed by the draft was that States frequently opted for a policy of integration which would not permit differentiation between groups or individuals. Regardless of what State policy might be, the Covenant guaranteed a number of rights to national minorities as well as to others.

43. Mr. AGUILAR URBINA said the Working Group had discussed the issue of transients, referred to by Mr. Ndiaye. It was not clear what groups or individuals would be covered by the term “transients” and whether the term might apply to, for example, tourists. It must be borne in mind that there were groups which moved across State frontiers and which were transients. In his own country, Costa Rica, and in Panama, one Indian tribe moved freely back and forth between the two countries pursuant to an agreement between them. For those Indians the frontier did not exist. In Venezuela another Indian group crossed the Amazon and were transients in Venezuela, Colombia, Brazil and Guyana. Such minorities should be protected one way or another. Means must be found to ensure that they were not regarded as tourists. They could not be regarded as nationals of a particular country. At a given moment in time they would be within the jurisdiction of a particular country and would fall within the definition of minorities, particularly ethnic minorities, which article 27 was designed to protect.

44. The CHAIRMAN said that, as a member of the Committee, he would like to comment on the draft which, in his view, represented a very good basis for discussion.

45. Mr. Sadi had referred to the issue of definition. Many United Nations attempts to define the term “minority” per se had failed and that factor must be borne in mind. Fortunately article 27 spoke of ethnic, religious or linguistic minorities, specifying three elements that provided a framework for the identification of minorities. To define the term in general was, in his view, a hopeless task.

46. Referring to the point made by Mr. Pocar, article 27 came at the very end of Part III of the Covenant, in which the substantive human rights under the Covenant were enumerated. That meant that all individuals belonging to a minority must be protected in respect of the rights which came before article 27 in Part III, namely, articles 6 to 26. Article 27 was however something over and beyond those other rights specified in Part III.

47. Mr. Pocar had also raised a very difficult question when he had suggested that a balance must be drawn between all the human rights of an individual belonging to a minority and the group rights of the minority per se. In his view the basic assumption of the Covenant was that human rights belonged to individuals. The current discussion about the right to development related to the fact that it was a guarantee of the right of each individual to develop his or her possibilities to the full extent; human rights represented a means to guarantee that development. That meant that there might be a case where an individual’s right or wish might come into conflict with the right to be protected of the group to which that particular person belonged. One way or another that problem must be tackled. In that connection, it might be necessary to ascertain the will of a particular group that wanted its language, religion or particular culture to be maintained.



48. Mr. Bruni Celli had referred to the fact that article 27 stipulated that certain rights were not to be denied but did not provide a guarantee. However, as some speakers had pointed out, the very nature of minority rights perhaps would require States to take some affirmative action. What the State should do or not do to protect minority rights depended on the will of the minority as a whole. That issue required further clarification.

49. In reply to a further point mentioned by Mr. Ndiaye to which Mr. Aguilar had replied in part, he felt that the Committee should include any alien in transit as well as tourists in the group to be protected under article 27. Nomadic peoples having some kind of permanent or regular relationship with a particular State should also be included. There might be a need for some qualification regarding the regularity and permanency of their link in order to limit the application of article 27.

50. Mr. LALLAH observed that the comments made had been most encouraging and the Committee was already far ahead of where it had been in 1985.

51. The Chairman said that it was his understanding that the Committee wished to move on to the second round of its discussion of the draft.

52. Mr. SADI, referring to Mr. Pocar's point regarding the work of the General Assembly and other bodies on the rights of minorities, said that he saw no harm in the Committee examining what the General Assembly had decided on the issue. He was also sure that the Sub-Commission on the Elimination of Discrimination and the Protection of Minorities and the Commission on Human Rights had contributed to the issue. He understood that work on a declaration on indigenous rights was in progress. The work of the Human Rights Committee was however distinctive because it was trying to elucidate the meaning of article 27 in a manner which none of the other United Nations bodies was trying to do. The General Assembly was clearly concentrating on the political aspect. The work of the Human Rights Committee need not be unduly affected or constrained by what the General Assembly was doing.

53. The CHAIRMAN said that the Committee would proceed to consider the draft general comment paragraph by paragraph.

54. Mr. LALLAH said that paragraph 1 was intended to be merely introductory and to incorporate more or less what was contained in article 27.

55. Mr. PRADO VALLEJO suggested that the second sentence should be more positive and might start by saying "This article establishes a right which should be recognized to persons belonging to a minority group."

56. The CHAIRMAN suggested that the sentence might start with the words: "The Committee emphasizes that ...." Such a phrase would draw the attention of the parties to the fact that the right was an individual right and not a group right as States parties sometimes believed.

57. Mr. LALLAH proposed that the first part of the sentence might be replaced by the following: "The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups ...."

58. Ms. EVATT supported Mr. Lallah's proposal.

59. Mr. WENNERGREN felt that the words “is separate from” in the second part of the second sentence of paragraph 1 were not adequate. The rights were additional to and in some ways coincided with rights in other articles, for example, article 18. He did not think they were additional to all other rights but only to some. It was important to emphasize that the rights deriving from article 27 were additional to other rights set out in Part III but not to all of them.

60. Mr. FRANCIS said that in his view the commentary should take in every element, both the negative and the positive.

61. Mr. PRADO VALLEJO said that Mr. Wennergren’s point was well taken. He therefore proposed that wording such as “which are added to the other rights which they enjoy” should be included in the last sentence of paragraph 1.

62. Mr. BRUNI CELLI asked to what extent the Committee should consider obligations to protect minorities in the form of positive action on the part of States. The second sentence should emphasize the safeguarding of such rights.

63. Mr. MAVROMMATIS proposed replacing “separate” by “distinct”. The word “all” should be deleted.

64. Mrs. HIGGINS supported the proposals of Mr. Mavrommatis and Mr. Prado Vallejo. Unlike Mr. Wennergren, she was convinced that the article 27 rights were additional to all other rights. Members of minorities had rights under article 27 in addition to all the other rights, not just some of them. Mr. Bruni Celli’s suggestion would, in her view, overload paragraph 1. His comment would fit in later in the general comment when it dealt with what States had to do.

65. The CHAIRMAN proposed the following wording for the first part of the second sentence of paragraph 1: “The Committee observes that this article establishes and recognizes that right, which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights ....”

66. Mr. FRANCIS said that he would like to go on record as preferring that the second sentence of paragraph 1 should end after the word “perspective”.

67. Mr. POCAR supported the Chairman’s proposal. In particular, he felt that misunderstandings could arise if “all” was eliminated.

68. Mrs. CHANET observed that the elimination of the word complémentaire in the French text would create difficulties.

69. Mr. AGUILAR URBINA said that the correct Spanish translation of “distinct” would be particular and not distinto.

70. Mr. LALLAH said that he hoped the inclusion of the word “distinct” would meet the point raised by Mr. Wennergren.

71. The CHAIRMAN invited the Committee to consider paragraph 2 of the draft general comment.

72. Mr. LALLAH said that paragraph 2 was intended to give an idea of the Committee's experience of the confusion that sometimes arose with regard to the right protected under article 27 and the right covered by articles 2 and 26.

73. Mr. SADI suggested that instead of saying that the right was sometimes "confused with" other rights, it would be better to say that it should be distinguished from them or went beyond them.

74. Mr. WENNERGREN considered that the first sentence of paragraph 2 was so important that it deserved a paragraph on its own. The right to self-determination could then be emphasized. As he saw it, what would be regarded as a people under article 1 might be a minority under article 27. For example, the Basques in Spain might find support for their position in article 1 but never in article 27. They might however, find support in article 27 for the use of their own language and culture. What required to be done was to distinguish between the purposes of article 1 and article 27.

75. Mrs. HIGGINS felt strongly that the Committee should refer to "confusion" in paragraph 2. That was exactly the Committee's experience and it was important to tell States that the Committee considered that they were muddled on those matters, and why, and to do it in the terms proposed. She disagreed with Mr. Wennergren. It had always been the Committee's position that self-determination meant that the entirety of the peoples of a State were entitled to choose their political and economic destiny. It was not a matter of any people, which might or might not be a minority, claiming a self-determination right.

76. She would like to make two proposals for the paragraph. At the end of the first sentence the following might be added: "Information in State reports on minorities also sometimes appears under the heading of self-determination." The Committee sometimes got article 27 information under the article 1 heading in State reports; that was further evidence of the confusion in the minds of States.

77. The last sentence of the paragraph might be redrafted as follows: "On this basis, some States parties who claim that they do not practice discrimination on ethnic, linguistic or religious grounds insist that they have no minorities."

78. Mr. AGUILAR URBINA said that in commenting on article 27, the report of the Libyan Arab Jamahiriya had stated that the Libyan people was homogeneous and that there were no minorities. He had also noted that the authors of communications did not differentiate between what was in article 27 and what was in article 1.

79. Ms. EVATT said that she wished to defend the text as it stood as it gave a logical explanation of the two principal areas of confusion in relation to article 27. She supported Mrs. Higgins on paragraph 2.

The meeting rose at 1 p.m.