



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/SR.1269  
14 November 2008

Original: ENGLISH

---

HUMAN RIGHTS COMMITTEE

Forty-ninth session

SUMMARY RECORD OF THE 1269th MEETING

Held at the Palais des Nations, Geneva,  
on Thursday, 21 October 1993, at 10 a.m.

Chairman: Mr. ANDO

CONTENTS

ORGANIZATIONAL AND OTHER MATTERS (continued)

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.25 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN invited the Committee to consider how, in the absence of any summary records for the current session, it would be able to prepare its next annual report. A letter was being sent to the Secretary-General and it was hoped that summary records could be provided at a later stage, so that the Committee would be able to work on its report. It might, however, be necessary for those responsible for drafting the Committee's comments on each State party's report to the current session to keep a memorandum and for the other members to prepare notes of their own remarks to give to them.
2. Mr. AGUILAR URBINA said he was concerned about the report to the Committee's next session, in July 1994. In the case of six States parties submitting reports, it would be impossible to prepare the summary of summaries normally included therein. It would also be impossible to prepare the Committee's final comments on a particular report unless members cooperated very actively with the rapporteurs for each State party.
3. Mrs. EVATT said that the letter to the Secretary-General should point out that there would be no complete record of the Committee's discussion with each State party, which was not acceptable.
4. The CHAIRMAN said that a draft letter to the Secretary-General would be circulated to the Committee.
5. Mr. HERNDL said that, at the start of the current session, he had commented on the budget cuts affecting the Human Rights Committee. He believed that a strongly worded letter from the Committee to the Secretary-General on the issue of summary records would receive a favourable reply, given the absolute necessity of such records for the purposes of the Committee's report.
6. He was, nevertheless, still worried by the ease with which it had been decided at some level of the Secretariat to cut off summary records for the current session without warning or explanation. If the Committee received no positive reply, it must remain firm and insist that the legal obligations of the United Nations Secretariat must be fulfilled.
7. The issue of how to go about preparing the next annual report could be decided later, in the light of the reply. The only option for the current session was for each member to give the Secretariat a survey of the main points raised by his own delegation.
8. Mrs. HIGGINS said that, the last time services had had to be cut, the argument that the Committee's work would be meaningless without summary records had been accepted. Rendering the work of the main treaty body inefficacious was hardly consistent with the statements made at the recent World Conference on Human Rights. For the current session, she felt that the responsibility to take notes of the points made by colleagues could safely be left with the person charged with drafting the general comment.
9. The CHAIRMAN said that the member responsible for drafting the comment on the Icelandic Report had already been warned to take his own notes.

10. Mr. FRANCIS said it should be made very clear in the letter that, as a matter of courtesy, members of the Committee ought to have been told of the decision before the start of its session.

11. After a brief discussion, in which Mr. WENNERGREN, Mr. EL SHAFEI, Mr. SADI and Mr. AGUILAR URBINA took part, the CHAIRMAN said he took it that it was agreed that, as far as the current session was concerned, those members in charge of preparing the Committee's draft comments on each State party's report would take notes, and the other members would help in the preparation by providing a summary of their own views.

#### Methods of work of the Committee under article 40 of the Covenant

12. The CHAIRMAN invited the Chairman of the pre-sessional working group on article 40 to introduce the group's recommendations.

13. Mr. LALLAH said that the paper containing the working group's recommendations had been prepared for the Committee's forty-eighth session but, for lack of time, its consideration had had to be held over to the current session. It consisted of 14 numbered paragraphs. The suggestions in paragraphs 13 and 14 regarding the Committee's general comments had already been put into effect. Mrs. Higgins had been appointed to prepare a preliminary draft of a general comment on issues relating to reservations and another member of the Committee had been appointed to prepare a revised draft general comment on article 25.

14. The question of the preparation of lists of issues was examined in paragraphs 2 and 3 of the paper. The working group recommended, in paragraph 2, that the procedures for dealing with States parties' initial and periodic reports should be harmonized, and that the practice of drafting lists of issues for the consideration of States' reports should be extended to initial reports.

15. It was felt that, in cases where initial reports were themselves insufficient, a list of issues would enable the State party to focus more closely on what the Committee required. It had also been suggested that the responses to the questions included in the lists of issues would be more fruitful if the States parties were given more notice rather than receiving them a few days only before the discussion. It had therefore been recommended by the working group, in paragraph 3, that the Committee should decide upon the schedule for the consideration of reports two sessions in advance.

16. The next pre-sessional working group would thus have to prepare lists of issues for two sessions but, subsequently, preparations would need to be made for the forthcoming session only. In that way, lists would be prepared in advance and States parties would have two or three months in which to consider their replies.

17. It was also recommended that the lists should focus more on particular issues raised in the report than on general issues. If the recommendation was adopted, the Committee would need: (a) to decide upon the schedule for the consideration of reports two sessions in advance, and (b) either to authorize the working group to dispatch the lists to States parties on its own responsibility, or to approve them in advance of the future session instead of, as was the current practice, at the same session.

18. Mrs. HIGGINS said that she had problems with each of the proposals. With regard to paragraph 2, she had difficulty in seeing how lists of issues for initial reports could be other than a repetition of the Committee's guidelines. If they went beyond that, the States parties coming before the Committee for the first time would be even more overwhelmed and, as a result, there would be even greater delay in the submission of initial reports. The recommendations in paragraph 3 seemed to introduce some difficult issues into an area where there were currently no real problems. By and large, the Committee received informed answers to its questions, in its dialogues with States parties. The proposals in paragraph 3 would open up all kinds of operational problems.

19. Mr. EL SHAFEI said he was opposed to drafting lists of issues for initial reports. The guidelines for initial and subsequent reports differed, and applying the same methods in each case would put States at a disadvantage at the beginning of their dialogue with the Committee. It would also cause difficulties for the Committee's work programme: if a list of issues was adopted for an initial report, there was a risk that more than two meetings would be necessary for its consideration. He had no objection, however, to the recommendation that lists of issues should be prepared one session in advance.

20. Mrs. EVATT said that the problem lay, not in the difficulty States might experience in preparing their replies to the Committee's questions, but rather in the preparation of those questions and the time taken by the working group to analyse one or more previous reports and the Committee's work in relation to those reports, so as to identify the issues that should be raised with the State party. To make the drafting of the questions more effective, it might be desirable, once it had been decided which reports were to be considered at the Committee's next session and who was to serve on the working group for that session, for the group to allocate the States parties concerned among its members, so that work could begin between sessions on the preparation of the questions. While she had little objection to the recommendations in paragraph 3, she wondered whether they were practical.

21. The CHAIRMAN said that the practice to date had been to appoint the members of the working group for article 40 at the end of a session of the Committee. Each member was then assigned a particular State party and the Secretariat sent him or her the relevant material well ahead of time, together with a draft list of issues. The member concerned would work on that list and reply back to the Secretariat, so that when the working group met, one week before the start of the following session, those exchanges would already be known. Intersessional exchanges between members might be possible, but that was for the members themselves to arrange.

22. Mr. SADI said that he took it that the purpose of extending the drafting of lists of issues to initial reports was to render the dialogue as meaningful as possible, as soon as possible. Time spent dealing with generalities was not well spent. If States parties just beginning the reporting process were helped to focus attention on specific areas of concern, it would be useful to them at the very outset of the process. The two meetings usually set aside for initial reports had not proved very useful in the past.

23. Some members were concerned about the practicality of the recommendations in paragraph 3, but he felt that they should be tried, with a view to giving States parties time to prepare their replies sufficiently. Some developing countries, in particular, lacked the facilities to prepare their responses adequately and needed extra time.

24. Mr. HERNDL said he agreed with Mrs. Higgins' views on paragraphs 2 and 3. It was not necessary to harmonize procedures further. The practice adopted so far had not proved detrimental to the thorough discussions of various issues. As for the recommendations in paragraph 3, lengthy preparations at the government level on replies to issues might harm the immediacy of the dialogue. Moreover, the Committee would be locked into a rigid system of advance planning at a time when it needed flexibility. It was not necessary, therefore, to change the current system of preparing lists of issues. The quality of the dialogue depended, in fact, on the quality of the representatives who appeared before the Committee.
25. Mr. LALLAH said that opinion in the Committee seemed to be against the recommendation in paragraph 2. He suggested, however, that something could be salvaged from it in connection with the recommendation in paragraph 8 on deficient reports. The great majority of such reports were initial ones. It might be possible for the Secretariat to alert the working group, at the beginning of a session, to an initial report that seemed clearly deficient. The working group could then examine the possibility of the report being supplemented by replies to a list of issues, or it could recommend to the Committee that the State party should be required to submit a new report in accordance with the guidelines.
26. Regarding the recommendations in paragraph 3, he did not think that the need to prepare lists of issues for two sessions as a transitional measure would present great difficulties. It had been argued that the quality of the dialogue with a State party depended on the preparedness and ability of the delegation itself and not on the list of issues. He fully agreed, but felt that preparing a list in advance could help to ease the task of the delegation by providing it with more detailed questions.
27. It had also been argued that, if lists were sent too much in advance, the dialogue would lose its immediacy. If a Government had too much time to prepare, the answers to sensitive questions might be a little more formal and less realistic than the Committee might like. The Committee might thus decide that it would retain its current procedure but bear in mind the possibility of adopting the suggested procedure in the future.
28. Mr. BRUNI CELLI said that, if the Committee's concerns about a particular report were sent to the State party in question some months ahead, the reply would be a kind of annex to the report and would not form part of the dialogue. That would distort the whole purpose of the list of issues. The dialogue with the representatives of a State party was often more important than the report itself.
29. Mrs. EVATT said that Mr. Sadi's point was well-taken. There was one good suggestion in paragraph 3 that might, perhaps, be accepted namely, that the working group should be authorized to send the list of issues in advance to States parties, at least to those whose reports were coming up in the first week of the session. That would give them a few more days to consider the issues.
30. In connection with paragraph 8, there would be merit in the working group's looking ahead to the reports coming up at the following session that were thought to be inadequate, so that it could specifically recommend to the Committee that the State in question should be asked to

resubmit a report, or so that the report in question could be included in the working group's preparatory work to enable it to produce a list of questions for the session at which the report was to be considered.

31. Mr. PRADO VALLEJO said that his experience in the Committee had led him to conclude that the quality of the dialogue depended on the quality of the State's representation. The quality of delegations, however, was beyond the Committee's control and depended on the political will of the Government concerned.

32. If the list of issues was sent out too early, the Committee might receive what was to all intents and purposes a quite different report, which it would not have been able to study in advance so as to ask the appropriate questions. From the practical point of view, it was essential to preserve the dialogue. Experience had been good so far except, perhaps, when the Committee asked for statistics. In such a case, however, it could request an additional written report. The existing system should be retained.

33. He agreed, however, that it was important that the working group on article 40 should receive the necessary documents from the Secretariat in good time, both the reports and other material and the draft lists of issues.

34. Mr. NDIAYE said that his instinct was not to make too many changes, since the best was often the enemy of the good. However, as a national of a developing country, he was aware that it was not easy to present a report to the Committee correctly. The States parties that succeeded in the exercise were usually those that sent strong delegations. The Committee had been able to observe that in connection with the second report of Iceland.

35. To reply to all the questions raised by the Committee, delegations needed to be at a high level and to have much experience, which was sometimes unfortunately not so in the case of developing countries. Given the economic difficulties being experienced all over the world, developing countries would increasingly be forced to leave the task to their regular diplomatic missions, which would not necessarily be technically well-informed about the areas focused on by the Committee.

36. He could, therefore, agree that a list of issues should be formulated for the examination of initial reports also, on the grounds that it would allow States parties to try to assemble specialists able to reply correctly to the questions raised. He did not think that that would impair the nature of the dialogue.

37. The problem was that such a list needed to be more or less contemporaneous with the examination of the report. If it was sent several months in advance, and answered by people other than those actually appearing before the Committee, it would not constitute a dialogue but rather a written reply. If the list was sent just before the session, the response would be better.

38. Mr. WENNERGREN said that, while there appeared to be no consensus in favour of a drastic change, it seemed that a little flexibility was thought desirable in regard to initial reports that might be deficient, with respect to which the Committee might decide to send a list of questions or to ask for a new report.

39. The CHAIRMAN, summing up the discussion, said that the sense of the meeting appeared to be that the Committee could with advantage be more flexible regarding initial reports. Without going so far as to establish a list of issues, the working group might recommend to the Committee that additional information should be requested beforehand. Regarding the proposal to schedule reports two sessions in advance, he noted that, usually, fewer than 10 reports were available for discussion. If five or six were selected, followed by another five or six, all the available reports would be used up. In the meantime, others might come in which were very much in arrears. The practice of the Bureau had been to give priority to reports that were very much delayed. If the proposal was adopted, the Committee would lose that flexibility. For that practical reason alone, the Committee should continue its current practice for the time being.

40. Mr. SADI said that, in his experience, small delegations in particular were alarmed about the sorts of questions that might be put to them. It would help such delegations if they could be told in advance what kind of questions were going to be raised. If a developing country had to send its head of mission, for example, he needed to have some idea in advance of the Committee's line of thinking. Otherwise he would be at a loss, would be forced to improvise and might perhaps give inaccurate answers.

41. Mr. HOUSHMAND (Centre for Human Rights) said that the Secretariat had been given a mandate some years previously, in the case of a report it deemed clearly deficient, to draw the attention of the State party concerned to the deficiency immediately and to retransmit to it a copy of the Committee's guidelines, emphasizing that, as submitted, such a deficient report would not meet the requirements of the Committee, with the suggestion that the State party concerned might thus wish to supplement or revise the document before it was placed before the Committee or its working group for consideration.

42. That mandate had been effective and had been faithfully implemented, in respect of both initial and periodic reports. The working group's recommendation was thus already being carried out, at least at the Secretariat level. If the Committee so desired, however, a deficient report could also be brought to the attention of the working group for any appropriate action it considered necessary.

43. Mr. WENNERGREN said that, while he agreed in principle with the Chairman's summing up, he believed that a slight change in the working group's methods would be needed. The working group under article 40 of the Covenant did not examine initial reports but only periodic reports, and produced lists of issues only in respect of the latter. In future, it would have to consider initial reports also, to see if there was any need for a list of issues or to recommend the submission of a revised report.

44. Mr. EL SHAFEI said that the question whether a list of issues for initial reports was needed had not been decided. As for the question whether the working group should make a preliminary examination of an initial report and decide if a new one was needed, or whether the report should be examined by the Committee which could then ask for a new report, the difficulty was that, in the latter case, the delegation would already have been invited to attend. A delegation could not appear before the Committee only to be told that the Committee had decided not to take up its country's report. All members of the Committee appeared to be happy

with the existing practice whereby the Secretariat had a mandate to determine whether an initial report was deficient, rather than waiting until the pre-sessional working group decided whether that was the case.

45. The CHAIRMAN said that he had not intended to imply that every initial report would have to be examined by the working group to see whether or not a list of issues was required. The current practice should be continued for the time being but, if the Secretariat deemed it necessary, the possibility of preparing a list of issues, even for an initial report, should be considered.

46. Mr. LALLAH, introducing paragraphs 4 and 5 of the working group's recommendations on the subject of the comments of the Committee at the end of the consideration of State reports, said that paragraph 4 recommended an amendment to rule 70 of the rules of procedure, whereby paragraph 3 of that rule would read: "3. On the basis of its examination of the reports and information supplied by a State party, the Committee, in accordance with article 40, paragraph 4, of the Covenant, makes such comments as it may consider appropriate." That would formalize a matter which had been in dispute at the outset of the Committee's existence but had subsequently been agreed: namely, that the Committee should adopt comments at the end of the consideration of States parties' reports. The amendment would inform all those concerned, States parties, non-governmental organizations and other interested parties, how the Committee actually proceeded.

47. In paragraph 5, there were four further recommendations intended to make the Committee's comments more precise and systematic. The first recommendation was that States parties should be requested, on a systematic basis, to report in their next periodic report on the measures they had adopted to follow up on the Committee's comments.

48. The second was that States parties should be reminded, as appropriate, of the availability of advisory services. The need for such a reminder would become clear during the examination of the report of a particular State party which had clearly experienced great difficulty in compiling its report.

49. The third recommendation was that the order of the comments should be rearranged so that "factors and difficulties impeding the implementation of the Covenant" would be dealt with immediately after the "introduction".

50. Lastly, State party representatives should be informed, at the conclusion of the consideration of the country's report, that the Committee's comments would be available to them at the last meeting of the session, after which the comment would be made public immediately. That recommendation was deemed necessary because, in the past, owing to the time-lag following the adoption of the Committee's report, the comments lost their immediacy and the press was unable to obtain them.

51. Paragraph 6 of the recommendations, regarding on-site missions, was closely related to paragraph 4. The current working group had done no further work on the suggestion which was that a new paragraph should be added to rule 70 of the Committee's rules of procedure to read: "4. Where it has been unable to obtain required information, and as a follow-up to recommendations included in earlier comments, the Committee may request the State party



concerned to agree to receive a mission consisting of one or two members of the Committee. The purpose of this mission would be to obtain information the Committee needs to carry out its functions under the Covenant and to develop a fuller understanding of the situation.”

52. The CHAIRMAN invited the Committee to comment first on the formal amendment to the rules of procedure recommended in paragraph 4.

53. Mr. SADI proposed that the word “collective” should be inserted before the word “comments” in the recommended new paragraph 3, to make it completely clear that it referred to joint comments and not to the individual comments of members of the Committee.

54. Mr. PRADO VALLEJO said that it would be better to retain the terminology of the Covenant, article 40, paragraph 4, of which referred to “general comments”.

55. Mrs. HIGGINS said that she was in favour of the text proposed in paragraph 4. She understood Mr. Prado Vallejo’s point, but the problem was that, over the years, the phrase “general comments” had taken on another meaning. She thought that, in the Committee’s parlance, members referred to the Committee’s “observations”. If that word was used in the annual report, it should be used in the rules of procedure.

56. Mr. EL SHAFEI said that it would be better to retain the phrase “such comments”.

57. The CHAIRMAN said that the word used in the annual report was “comments”, not “observations”. He would take it, therefore, that the Committee wished to adopt the recommendation in paragraph 4 as it stood. With respect to recommendation 5 (b), he pointed out that, when he was in the Chair, he always reminded States parties of the availability of advisory services. If the Committee were simply to continue that practice, it would take care of recommendation (b). He invited the members of the Committee to discuss paragraphs 5 and 6 together.

58. Mr. SADI said that he had difficulty understanding the meaning of the expression “more systematic”. The concept should be put more clearly or else deleted.

59. Mrs. HIGGINS said that she was in favour of all the recommendations in paragraph 5, particularly that in subparagraph (d) whereby the Committee’s comments would be made available at the last meeting of its session. NGOs in particular were always anxious that there should be no hiatus.

60. She did not, however, support the recommendation in paragraph 6. Proposals to send on-site missions were simply delusions of grandeur. Just because other committees dealing with human rights developed particular procedures, the Human Rights Committee had not necessarily to follow suit. There would be occasions on which the Committee might wish to contact a Government, in instances arising under the Optional Protocol but they would probably be very limited. Certainly, no impression should be given that, with the limited funds at the Committee’s disposal, its members were going to start junketing around the world.

61. Mrs. EVATT said that she supported the recommendation in paragraph 5 and, in principle, the idea behind paragraph 6, although the opportunities for sending on-site missions would probably be very limited. It would be advisable to allay any misgiving that the Committee might make use of the procedure to look into individual cases. Any such mission should be limited to seeking information about the law and practice of a State.

62. Mr. EL SHAFEI said he supported the proposal to delete the phrase “more systematic”, from paragraph 5. As the Chairman had noted, recommendation (b) was already in practice. He was opposed to the recommendation in paragraph 6, for the reasons put forward by Mrs. Higgins, and also because it was too vague and might be dangerous. He noted that there was a difference between follow-up on communications and the follow-up on reports under article 40. It might be necessary to establish a procedure which could be applied in the case of communications.

63. Mr. PRADO VALLEJO said he endorsed the recommendations in both the paragraphs. With regard to paragraph 6, where gross violations of human rights existed, it might be appropriate to send a mission to provide aid and seek information, and funds to do so might be available at some later stage. The other human rights bodies had such powers and the Human Rights Committee should not close the door to the possibility.

64. Mr. BRUNI CELLI said that he did not think the recommendation in paragraph 6 was a delusion of grandeur, though it might be a delusion of wealth. From his experience with the inter-American regional system, he was convinced that on-site visits were an excellent method of investigation. The rule regarding on-site missions should be included in the rules of procedure, but the phrase “where it has been unable to obtain required information” should be replaced by the words “when the Committee regards it as necessary”.

65. Mr. SADI said that the idea of on-site missions was an ambitious objective rather than a delusion. Clearly, the concept was contingent on the agreement of the State party. If the Committee was unable to agree on it for the time being, the possibility should nevertheless be kept open.

66. Mr. FRANCIS said that he fully supported the recommendation in paragraph 6. Such visits should be part of the Committee’s public relations techniques and he would welcome an initiative by the Committee to visit his own country. He was glad to hear that on-site visits constituted one of the instruments available to the inter-American human rights bodies.

67. Mr. HERNDL said that the recommendations in paragraph 5 were reasonable ones. The words “on a systematic basis”, in recommendation (a), meant that countries should report routinely on follow-up measures. He did not, however, share the understanding of the Committee’s role that underlay the recommendation in paragraph 6 and did not think that a new rule of procedure was needed. If a situation arose, the Committee could always request permission from a State for a visit by one or two of its members but it would be unwise to include an explicit provision to that effect in the rules of procedure. On the one hand, it would certainly have financial implications and, on the other, it would give the impression that the Committee was eager to send out missions.

68. Mrs. HIGGINS said that she was not opposed to on-site visits in principle and greatly admired the way in which the procedure had operated for the inter-American institutions. Her point was that every human rights body had its own way of functioning. The inter-American system did not have the Committee's system of dialogues and reports but worked - and worked brilliantly - on the basis of fact-finding and on-site missions.
69. In response to the reference to other United Nations bodies, she pointed out that the Committee was not a United Nations organ but a treaty instrument with its own working methods. She was concerned lest a situation was reached in which every human rights body was doing the same thing in duplicate and none of the complementary and different ways of supporting human rights remained.
70. Mr. EL SHAFEI said that he did not think the Committee would be able to agree on the recommendation in paragraph 6. Indeed, he had the impression that there had been differences of opinion on the subject in the working group itself.
71. Mr. NDIAYE said that he endorsed all the recommendations in paragraph 5 but did not agree with the recommendation in paragraph 6. A distinction must be drawn between the situation in which a State wanted to do its duty but lacked the information or the experts needed to draft a report - in which case it could be advised to ask for assistance - and the situation in which the State itself was recalcitrant and unwilling to cooperate with the Committee. In the latter case, it was difficult to see what an investigative mission could accomplish.
72. The presence of an expert in a country whose Government did not wish to provide information would not modify that Government's attitude and, without its cooperation, little could be discovered. The Committee had its own working methods, which were quite effective and non-political, a quality that should be retained. He was thus totally opposed to the inclusion in the rules of procedure of the text recommended in paragraph 6. The other alternative, a recommendation to seek assistance, did not need to be referred to in the rules of procedure. The practice so far had been flexible and effective.
73. Mr. AGUILAR URBINA said that there had been no differences of opinion in the working group. He himself was very much in favour of sending missions, probably because of his positive experience with the inter-American system. Mr. Ndiaye had referred to the non-political nature of the Committee. Other missions had failed because they were political, but the Committee could make use of its status as an expert body.
74. It should not be forgotten that the Human Rights Committee was the main treaty body, so that its missions could be expected to have a stronger impact than those sent by other bodies. There would undoubtedly be some recalcitrant States, which would probably refuse to accept a mission, but there could also be others that were genuinely interested in what could be done to improve their human rights situation and the Committee should visit those countries and cooperate with them and their peoples. The proposal would improve the Committee's system of work which, it was agreed, needed substantial modification.
75. Mr. FRANCIS said that it was not important whether the provision for on-site missions was included in the rules of procedure or not, as long as the Committee's inherent competence to dispatch such missions was recognized.

76. Mr. LALLAH said that the difficulties that had arisen in connection with paragraph 6 were more apparent than real. The Committee was dealing only with a rule of procedure, not with the Covenant. He believed that the Covenant gave the Committee a number of powers in order to fulfil its functions and that its power to dispatch on-site missions would remain even without a rule of procedure. Such missions should not be restricted to States' reports but should be general. If a concrete situation arose, the Committee could decide to send a mission, not only for the purpose of gathering information but as a preventive measure, as envisaged in paragraph 10 of the recommendations, so as to be able to inform the competent organs of the United Nations of a grave human rights situation. He proposed, therefore, that the Committee should adopt the recommendations in paragraph 5 as they stood except that in subparagraph (c), the current working group suggested that the word "impeding" should be replaced by the word "affecting", and that the recommendation in paragraph 6 should be left pending until such future date as the Committee came to examine its powers under the Covenant.

77. The CHAIRMAN, summing up the discussion, said that there had been some objection to the use of the expression "more systematic" in paragraph 5. Perhaps the word "uniform" could be used instead. What was meant was that the practice should be a regular one, carried out in a similar way for every State party. No objection had been raised to the suggestion that "impeding" should be replaced by "affecting" in subparagraph (c). As for subparagraph (d), it might be preferable to say "as soon as possible" instead of "at the last meeting of the Committee's session". The important point was that the comments should go first to the State party's delegation and then be made available to the public. Regarding paragraph 6, there was no real division of opinion. All members were agreed that, if a concrete case came up and it seemed to be necessary, the Committee could ask a State party to accept an on-site investigation. Opinion was divided, however, as to whether a provision to that effect should be included in the rules of procedure. He did not think it would be proper to ignore the opinions of those members of the Committee who were not present by taking a decision immediately, and therefore suggested that the rules of procedure should remain unchanged, on the understanding that an on-site mission was not precluded if the need arose.

78. Mrs. HIGGINS said that, while she agreed in general with the Chairman's summing up, she understood, with regard to subparagraph 5 (d), that other bodies that adopted concluding observations did so in public, so that they could be made use of immediately by the interested parties. It was the Committee's practice to adopt its comments in closed session, but it could adopt them formally in public on the last morning, so that the State concerned would know of them immediately and those NGOs that wished to use them would have them at once.

79. Mr. AGUILAR URBINA said he supported that suggestion. Making them available immediately was the most effective means of ensuring that the Committee's comments would be made use of, by the press as well as by the parties concerned.

80. Mr. EL SHAFEI said that the comments should first be delivered to the State party in question and then adopted publicly.

81. The CHAIRMAN said that his idea had been that the comments should be made available as soon as possible after their adoption. In that connection, it should not be forgotten that amendments might have to be made to them at the last minute.

82. He invited the Committee to consider the recommendation in paragraph 7 regarding overdue reports.

83. Mr. LALLAH said that, in its recommendation regarding overdue reports, the working group had taken note of the new procedures developed by the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights and had suggested a new procedure for the Committee, whereby States parties whose reports were overdue for five years or more would receive one final note verbale urging them to submit their overdue report as soon as possible. The note would also indicate that, in case the report was not submitted within six months, the Committee would appoint one of its members to prepare a report on the implementation of the Covenant in the State party concerned on the basis of all reliable information available, for consideration by the Committee at one of its forthcoming sessions.

84. Mr. BRUNI CELLI said that he agreed that there should be some penalty for continued failure to submit a report, but he wondered on what basis the Committee could appoint one of its members to prepare a report. No such formula was to be found in article 40 of the Covenant.

85. Mrs. HIGGINS said that the problem was a real one to which the right solution must be found, but she did not think that the suggested procedure would provide it. Some States might quite welcome the idea of having the Human Rights Committee prepare a report, which would then be simply ignored. There was surely a more efficacious way of publicizing a State's failure to submit a report.

86. Moreover, there were some States that did comply with their obligations but after a considerable delay. If the recommended procedure had been adopted at an earlier stage, the Committee would not shortly be holding a dialogue with Cyprus, and would not recently have had dialogues with Iceland or on the first initial report from Belgium. The Committee's methods of pressure had been successful in some cases and, by adopting the recommended procedure, it would lose the opportunities that occurred as a result of changes on the political scene.

87. Mr. HERNDL said he endorsed the points made by the previous speakers. Article 40 imposed an obligation on a State which the Committee could not assume in its stead. It should, however, continue to exert firm pressure and should publicize cases where States were seriously in default of their mandatory international obligations.

88. A separate section should be devoted to such instances in its annual report and they should be brought to the attention of the General Assembly. A second argument against the recommendation was that it would be impossible for a member of the Committee to prepare a report containing the information requested in article 40 from a standpoint outside the country in question.

89. Mr. HOUSHMAND (Centre for Human Rights) said that the idea behind the recommendation stemmed from the practice of the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights. In these cases, when a report was overdue for five years or more, the State party received, on the basis of a decision by the Committee, a final note verbale urging it to submit its report as soon as possible and informing it that, if the report was not received within a certain time, the Committee in

question would then decide to consider the situation relating to the implementation of the treaty in the country concerned on the basis of all available information, including that from non-governmental sources. Thus, rather than having a member of the Committee in question prepare a report, the Committee considered a specific situation in regard to the provisions of the treaty in the country concerned at its next session, the State party concerned being notified so that it could send a representative even if there was no report. The procedure proposed in the recommendation was a variation on that of two other treaty bodies functioning within the United Nations system.

90. Mr. FRANCIS said that the Committee should indicate in its note verbale to the State party concerned that it intended to present a report to the Secretary-General on that State's implementation of the Covenant. A measure of punishment would arise in that context because the matter would thus become one for the General Assembly to discuss and it would surely not be in the country's interest for the matter to be taken that far. The Committee needed to devise a better way out of the difficulty than the discussion of a report made up from material provided by non-governmental organizations and from other sources.

91. Mr. WENNERGREN said that there was no specific provision in the Covenant empowering the Committee to monitor its implementation, although the conclusion could be indirectly drawn. He believed, however, that the Covenant should be interpreted as providing for the Committee actively to monitor its implementation. It should therefore be possible for the Committee to make a study of the implementation of the provisions of the Covenant in a certain country, even if it received no State report.

92. The CHAIRMAN said that the purpose of article 40 of the Covenant was to bring about a dialogue based on a report submitted by a State party. He found little support for the recommended procedure and would therefore take it that the current practice should continue for the time being.

93. Mr. LALLAH said that the methods that had been developed so far should be continued and intensified.

The meeting rose at 1 p.m.