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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-first session

SUMMARY RECORD (PARTIAL)* OF THE 30th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 10 November 2003, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

CONTENTS

OPENING OF THE SESSION

STATEMENT BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

ADOPTION OF THE AGENDA

* No summary record was prepared for the rest of the meeting.

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CONTENTS (continued)

ORGANIZATION OF WORK

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH
ARTICLES 16 AND 17 OF THE COVENANT

RELATIONS WITH UNITED NATIONS ORGANS AND OTHER TREATY BODIES

The meeting was called to order at 10.15 a.m.

OPENING OF THE SESSION

1. THE CHAIRPERSON declared open the thirty-first session of the Committee on Economic, Social and Cultural Rights.

STATEMENT BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

2. Mr. BRUNI (Office of the United Nations High Commissioner for Human Rights) said that the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations in general were going through very difficult times, and that events since the Committee's previous session in May had placed further strain on United Nations human rights activities. Everyone had been deeply affected by the sudden death of the late High Commissioner, Sergio Vieira de Mello, in Baghdad on 19 August 2003; there had been an overwhelming response to that heinous crime.

3. The work of OHCHR was guided by the Secretary-General's agenda for reform of the United Nations, and in particular the measures proposed in his report on the strengthening of the United Nations: an agenda for further change (A/57/387). The report proposed 36 actions, of which actions 2 and 3 were of particular relevance to the work of the Committee and all treaty bodies.

4. Action 2 aimed at strengthening United Nations human rights-related actions at the country level. In that connection, OHCHR, in cooperation with the United Nations Development Group and Executive Committee for Humanitarian Affairs, had devised a plan of action to improve the integration of human rights in the activities of United Nations agencies at the country level, with modalities to enhance cooperation between United Nations agencies and the human rights treaty bodies and special mechanisms.

5. Action 3 involved treaty body reform and the development of more streamlined reporting procedures, on which OHCHR had conducted broad consultations with the human rights treaty bodies, States parties, United Nations agencies and civil society organizations. The exercise had included a brainstorming meeting in Malbun, Liechtenstein, in May 2003, and discussion at the fifteenth meeting of chairpersons and the second inter-Committee meeting of the human rights treaty bodies. It provided an opportunity to take a fresh look at the existing system and compare various proposals.

6. The result of those deliberations was a general recommendation that the treaty bodies should harmonize their reporting guidelines; the possibility of an expanded core document, covering information relevant to all treaty bodies, combined with shorter and more targeted periodic reports, should be explored as a way of improving the effectiveness of the reporting system.

7. In response, OHCHR was preparing draft guidelines for an expanded core document and looking at possible ways of harmonizing the treaty reporting guidelines. The draft guidelines would be circulated among all treaty bodies for comments early next year and would be considered by the third inter-committee meeting and the sixteenth meeting of chairpersons in June 2004.

8. The Sub-Commission on the Promotion and Protection of Human Rights, at its fifty-fifth session, had agreed a set of norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. The norms would be submitted to the Commission on Human Rights for consideration.

9. The Sub-Commission had considered reports on globalization and its impact on the full enjoyment of human rights (E/CN.4/Sub.2/2003/14) and on the rights of non-citizens (E/CN.4/Sub.2/2003/23). It had also considered the progress report submitted by the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2003/10). The final report would be submitted to the Sub-Commission at its next session. The Sub-Commission had requested its members to undertake further studies on a number of issues, including extreme poverty, rural poverty, the right to development, discrimination based on work and descent, and non-discrimination.

10. The Sub-Commission had adopted a resolution urging the Commission on Human Rights to mandate the open-ended working group on a draft optional protocol to the Covenant to proceed with drawing up the text. It had called upon the Commission to produce a protocol that was comprehensive in scope, in line with the Committee's recommendations. The first meeting of the working group would take place from 23 February to 5 March 2004.

11. Earlier in the year, the Economic and Social Council had authorized the Sub-Commission to convene an annual intersessional forum on economic, social and cultural rights, to be known as the Social Forum. The next session of the Social Forum would take place during the Committee's thirty-second session, in May 2004, on the theme of rural poverty, development and the rights of peasants and other rural communities. The Sub-Commission encouraged the Committee to participate.

12. The draft guidelines on a human rights-based approach to poverty reduction strategies, developed at the suggestion of the Committee, were currently being revised with a view to making them fully operational. OHCHR would also be producing accompanying tools to make the guidelines more user-friendly.

13. With regard to the ongoing work under the aegis of the Food and Agriculture Organization of the United Nations (FAO) on the elaboration of voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, he drew attention to the first draft guidelines prepared by the Bureau of the FAO Intergovernmental Working Group, which had been made available to the Committee for comment. As requested by the World Food Summit in June 2002, FAO should assist the Intergovernmental Working Group in its work in close cooperation with the relevant treaty bodies of the United Nations system.

14. He congratulated the Committee on its active efforts to consolidate cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO) by scheduling a second meeting, during the May 2004 session, of the Joint Expert Group on the monitoring of the right to education. Last month, the UNESCO General Conference had adopted a new comprehensive strategy on human rights which identified increased cooperation with OHCHR and human rights treaty bodies as a priority.

15. He welcomed the Committee's cooperation with the International Labour Organization (ILO) on the right to work, and looked forward to the day of general discussion on article 6 of the Covenant. He welcomed the Committee's intent to explore a closer working relationship with ILO.

16. The CHAIRPERSON expressed the Committee's sorrow at the tragic death of the late High Commissioner.

17. The question of an expanded core document had been of great concern to the chairpersons at their fifteenth meeting. The Committee welcomed the convening of the open-ended working group on the draft optional protocol in February 2004 and looked forward to taking part in the Social Forum in May 2004. It was gratifying that the draft guidelines on poverty reduction were nearing completion; the Committee looked forward to hearing more about the draft guidelines on the realization of the right to adequate food.

ADOPTION OF THE AGENDA

18. The agenda was adopted.

ORGANIZATION OF WORK (E/C.12/2003/L.2)

19. The CHAIRPERSON announced that the Committee would not consider the adoption of a general comment on article 3 of the Covenant as scheduled for the current session, but would do so in May 2004. Instead, Friday, 21 November would be used to begin discussion on a general comment on the right to work (article 6 of the Covenant).

20. As the colleagues who had been appointed country rapporteurs on Yemen and Guatemala were no longer on the Committee, she asked for volunteers to produce the draft concluding observations on the reports of those two countries.

21. She also announced that the pre-sessional working group (1-5 December) would consider the fourth periodic report of Italy, the second periodic report of Azerbaijan, the third periodic report of Chile, and the initial reports of Zambia and of Serbia and Montenegro.

22. Mr. TEXIER said that the Committee should commit itself to adopting a general comment on article 3 of the Covenant at its May 2004 session. There was sufficient time to ensure its completion by that date.

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH
ARTICLES 16 AND 17 OF THE COVENANT

23. The CHAIRPERSON said that the third periodic report of Chile and the initial reports of Zambia and of Serbia and Montenegro had been received in May 2003. At its May 2004 session the Committee would consider the initial reports of Lithuania, Greece and Kuwait, the fourth periodic report of Spain and the second periodic report of Ecuador.

RELATIONS WITH UNITED NATIONS ORGANS AND OTHER TREATY BODIES
(A/58/350)

24. The CHAIRPERSON drew attention to the recommendations contained in the report of the chairpersons of the human rights treaty bodies on their fifteenth meeting (A/58/350, paras. 44-57); the report of the second inter-committee meeting of human rights treaty bodies was annexed thereto.

25. Mr. RIEDEL said that it was important to try to adopt a general comment on article 6 of the Covenant, on the right to work, at the Committee's next session. After the day of general discussion on article 6, the Committee should hold a private discussion before inviting other actors to comment. With the assistance of the Office of the United Nations High Commissioner for Human Rights he was preparing a draft general comment on article 15 of the Covenant, which he would submit to the Committee at the current session.

26. There had been general agreement at the second inter-committee meeting of human rights treaty bodies that concluding observations should contain action-oriented recommendations and that generalities should be avoided. While it was important to discuss general comments with other treaty bodies concerned with similar issues, it was not feasible in the current circumstances to draft joint general comments.

27. The other treaty bodies supported the approach taken by the Committee regarding overdue reporting and non-reporting by States parties, and agreed that the reporting procedure should be open and transparent and should provide clear indications as to the consequences of failure to report. The role played by civil society and non-governmental organizations (NGOs) in motivating States parties to fulfil their reporting obligations was also noted. All treaty bodies agreed that data supplied by States parties in their reports should be disaggregated if their dialogue with the Committee was to be meaningful.

28. It had been suggested that treaty bodies should consider designating one or two committee members as follow-up rapporteurs to review States parties' responses to concluding observations before the next periodic report was taken up. It was generally felt that the information provided by NGOs was valuable in enhancing committee members' knowledge and that such information should be transmitted to States parties in order for them to comment. It had also been suggested that a country-specific summary, including information from the United Nations Commission on Human Rights and other human rights mechanisms and treaty bodies, should be prepared.

29. Treaty bodies should also consider nominating members to act as liaison persons with specific United Nations bodies. While the Committee had already established close relations with a number of specialized agencies, it should consider closer cooperation with the World Bank and the International Monetary Fund. Although the indivisibility of human rights implied the cross-referencing of concluding observations, cross-referencing made the reading of concluding observations overly technical and cumbersome, and should be used sparingly. Concluding observations should be short, operational and as non-technical as possible.

30. With regard to the Secretary-General's ideas on strengthening the human rights treaty body system, participants at the inter-committee meeting had concluded that the preparation by States parties of a consolidated report would be unmanageable and would hinder analysis of individual treaty obligations. An expanded and regularly updated core document, linked to the periodic reports, could provide an alternative to a consolidated report.

31. The inter-committee meetings of human rights treaty bodies were enormously helpful and contributed to streamlining the efforts of committees, improving transparency and facilitating the exchange of information.

32. Mr. MALINVERNI said that the Committee had not devoted sufficient attention to the issue of follow-up to concluding observations. The procedure to monitor implementation of concluding observations should be strengthened: the Committee should not wait five years until it was examining a State party's next periodic report to see what had been done to address its previous concluding observations. Some issues required follow-up within a relatively short period of time. For important issues, the maximum time period should be one year. Follow-up procedures were the weak point of all treaty bodies and the Committee should improve its procedures to ensure that its concluding observations were not disregarded.

33. Mr. SADI enquired whether the meeting of the chairpersons of the human rights treaty bodies had discussed the status of concluding observations. He was concerned that, unlike the Committee, States parties might not view concluding observations and general comments as legally binding.

34. The CHAIRPERSON said that the Committee's concluding observations were not, in fact, legally binding upon States parties. Rather, they reflected the Committee's interpretation of what steps should be taken in a particular State party after consideration of its periodic report. Equally, the Committee's general comments reflected its interpretation of the Covenant, and were intended to guide both States parties and the Committee itself. Even though general comments were not legally binding, States parties took them very seriously and appreciated the clarity they lent to an otherwise vague Covenant. It was, however, up to States parties whether or not to apply them. It was encouraging that independent experts and NGOs all over the world viewed the Committee's general comments as an important aid to interpreting the rights contained in the Covenant.

35. Mr. SADI said he would like to elevate the status of general comments to make them legally binding, especially in view of the effort the Committee put into drafting them. The interpretation of the Covenant should be as binding as the Covenant itself.

36. Mr. RIEDEL said that States parties' obligations under international law were to report periodically to the Committee. The Committee's legal function was to draft concluding observations, which consisted of suggestions and recommendations. As such, they did not carry the same force as the judgement of a court. For that reason, efforts were under way to develop alternative forms of monitoring. The Committee's general comments served as non-binding guidelines for the benefit of States parties, civil society and the Committee itself. States parties were bound by the Covenant, but because the text of the Covenant was very general, it required elaboration. General comments reflected the Committee's interpretation, based on its practice over the past 15 years, of the Covenant's provisions. The consistent application of the principles contained in general comments could contribute to the establishment of customary international law. That, of course, presupposed that the content of a general comment formed part of the legal obligations of the State in question and constituted a practice of that State. General comments often contained declarations of international customary law relating to minimum human rights standards.

37. Mr. TEXIER said that even if general comments were not legally binding there was at least one country whose constitutional courts had handed down a sentence based on the Committee's general comments. It would be very interesting to the Committee, and particularly to the open-ended working group on a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, to make a compilation of certain countries' jurisprudence as it would provide concrete examples of how national legal decisions had incorporated the provisions of the Covenant.

38. Mr. KERDOUN said he wondered whether States parties truly took general comments and concluding observations into account. It was always the Committee, and not the State party, which chose the subject of the general comment. Perhaps the Committee could develop a system to enable States parties to request the Committee's advisory opinion on a particular topic, which would identify States parties' areas of interest in implementing the Covenant. It was doubtful whether customary law in the field of human rights could result from the general comments of the Committee when the Committee could not even make binding decisions.

39. Mr. CEAUSU said that the value of the Committee's general comments and concluding observations, a subject already debated on several occasions, was of obvious importance. Concluding observations contained recommendations, and recommendations, by definition, were not binding. Whenever an international body formulated recommendations, the recipients could either accept or reject them. It did not follow that because the Committee had not received a formal response from a State the recommendations were being ignored. The Committee worked on the basis that unless a Government had formally responded negatively to the recommendations, as had happened on a small number of occasions, they had been accepted.

40. Regarding the suggestion that follow-up to implementation of concluding observations should be strengthened, it was in fact within the Committee's purview to take such action. It was the Committee's practice to examine the implementation of recommendations when it considered the State's next periodic report. Perhaps the Committee should organize its work in such a way as to split the process into two parts, one to cover new facts, the other to deal with the implementation of recommendations, in order to oblige delegations to discuss in more detail the measures undertaken to implement the recommendations.

41. The CHAIRPERSON said that, although the topic was substantive, it could not be discussed at length as the Committee was already behind schedule.
42. Ms. BRAS GOMES said that she would welcome the opportunity to discuss the issue in more depth at a later time.
43. Mr. MALAMPRE (United Nations Educational, Scientific and Cultural Organization (UNESCO)) said that UNESCO's recent General Conference had been marked by the return of the United States of America to the organization. The United Kingdom had returned four years previously, leaving Singapore the only country left to return. When those countries had left the organization, UNESCO had lost one third of its budgetary resources, resulting in the loss of 800 jobs. Although their return had not restored budgetary resources to their previous level, the recent increase in financial resources had allowed an increase in activity, centred on five priorities: basic education for all; water and associated ecosystems; ethics of science and technology; pluralism and intercultural dialogue; and access to information and knowledge.
44. Exceptionally, the General Conference had adopted a number of normative instruments: a declaration on the protection of human genetic data, an instrument on multilingualism and access to cyberspace, a declaration on the protection of digital heritage; an instrument on the intentional destruction of cultural heritage; and a convention on the protection of intangible heritage, such as oral traditions and languages. The General Conference had also decided to elaborate a number of other normative instruments, on doping in sport, bioethics, and cultural diversity. Further, the 2001 Universal Declaration on Cultural Diversity had been judged too weak by numerous States parties in the context of globalization and it had therefore been decided to draft a convention on the diversity of cultural content and artistic expression, in discussion with the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), and the United Nations Conference on Trade and Development (UNCTAD). UNESCO had also recently contributed to the drafting of the 2004 United Nations Development Programme (UNDP) Human Development Report.
45. Mr. SINGH (United Nations Educational, Scientific and Cultural Organization) said that the new International Convention for the Safeguarding of the Intangible Heritage would be of particular significance in the field of cultural rights. In the field of the right to health, UNESCO cooperated with the inter-agency flagship school health programme FRESH (Focusing Resources on Effective School Health) and UNAIDS, particularly in the context of the Inter-Agency Task Team on HIV/AIDS and Education. In relation to the right to work, UNESCO collaborated closely with ILO in the implementation of the Revised Recommendation concerning Technical and Vocational Education, updated in 2001. UNESCO also undertook a number of regional training activities with a view to preparing people for the right to work. However, UNESCO's principal role, in line with its constitutional mandate, was in the area of the right to education.
46. The first meeting of the Joint Expert Group on the monitoring of the right to education had been very fruitful. Debate at UNESCO had highlighted the particular significance of the recommendations contained in the report of the meeting with regard to incorporating legal obligations under UNESCO instruments into national legal systems.

47. The Executive Board had adopted a decision on follow-up to the first meeting of the Joint Expert Group providing guidance for the future work of the Group. It also outlined priority areas regarding the right to education: strengthening the foundations of the right to education in national legislation; means of combining the reporting obligations of States parties to the Convention against Discrimination in Education and those of States parties to the Covenant on Economic, Social and Cultural Rights; and the definition of a set of indicators for the monitoring of the right to education.

48. Ms. DONDERS (United Nations Educational, Scientific and Cultural Organization) said that at its recent General Conference UNESCO, in addition to adopting human rights instruments on genetic data and cultural heritage, had adopted two human rights strategies: an integrated strategy to combat racism, discrimination, xenophobia and related intolerance and a strategy on human rights. The strategies were interrelated and dealt with differing dimensions of human rights.

49. The human rights strategy had been prepared in response to the United Nations reform programme launched in 1997, and the call for enhancement of the human rights programme and its integration into the broad range of United Nations activities. The UNESCO strategy was intended as a significant contribution to the implementation of the United Nations agenda for the twenty-first century, the United Nations Millennium Declaration and the Millennium Development Goals. The strategy was aimed at integrating a human rights-based approach into all UNESCO activities. Human rights standards would be applied in the planning, implementation and evaluation of all projects. The main lines of action were human rights research and human rights education. UNESCO would continue its efforts in standard-setting, monitoring and protection. The successful implementation of the human rights strategy depended on strengthening partnerships with the United Nations system, regional intergovernmental bodies, national commissions for UNESCO, national human rights institutions, research and training centres, NGOs and other organizations of civil society.

50. UNESCO viewed the Committee as one of its main partners in developing the research agenda for the next biennium. Under the human rights strategy, research would focus on the content and nature of obligations, state of implementation, indicators and justiciability of human rights within UNESCO's fields of competence, including economic, social and cultural rights. The Committee's suggestions on possible research priorities and advice on the development of indicators in those fields would be appreciated.

51. The Universal Forum of Cultures, to take place in Barcelona from June to September 2004, would provide an opportunity to make progress in the field of cultural rights. UNESCO was one of the main partners of the city of Barcelona in organizing the event, which would include festivals and exhibitions as well as debates, conferences and seminars. One of the events in which UNESCO would participate was the Congress on Cultural Rights and Human Development, with the focus on redefining cultural rights, cultural indicators and cultural policies. UNESCO hoped to cooperate closely with the Committee in making preparation for the Congress and in ensuring its success.

52. Another important human rights meeting, initiated by UNESCO, was the World Forum on Human Rights, to take place in Nantes in May 2004. The most pressing human rights issues would be discussed by representatives of States, international organizations, the academic community and civil society. The main aim of the Forum was to provide a platform for the exchange of knowledge, general reflection, intensive debate and exchange of best practices. The main themes would include poverty, terrorism and new forms of discrimination in relation to human rights.

53. Mr. THOMAS (Food and Agriculture Organization of the United Nations) said that the Food and Agriculture Organization of the United Nations (FAO) had established an ad hoc unit to draft voluntary guidelines on the right to adequate food; the guidelines were to be submitted to the FAO Committee on World Food Security by September 2004. The project, which was funded entirely by donors, currently received most of its funding from Germany, Switzerland and Norway.

54. At its first session, in March 2003, the Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security had focused on submissions by States, intergovernmental organizations and NGOs, in which they had expressed their views of what should be included. A number of obstacles had been encountered in the drafting process; for example, the legal foundations of the guidelines had been disputed both by States that were not parties to the International Covenant on Economic, Social and Cultural Rights and by those that were parties to it but did not recognize certain legal obligations arising from it. The extent to which such issues as justiciability, recourse, and national legal frameworks should be included in the voluntary guidelines had also been disputed. Equally, the international dimension of the voluntary guidelines, issues such as aid, trade and debt relief, still had to be tackled. Finally, there had been a difference of opinion concerning the structure of the voluntary guidelines.

55. FAO was conducting case studies in six countries which had experience with the implementation of the right to food, and was preparing a number of information papers on difficult areas.

56. At its second session, in October 2003, the Intergovernmental Working Group had sought to resolve the differences of opinion; considerable progress had been made. The third session would take place in June 2004. It had been decided that an inter-sessional negotiating mechanism would be set up in the form of an open-ended working group, with six representatives from each geographical region, three NGO representatives, and representatives of international organizations. FAO would strongly welcome the Committee's participation in the Intergovernmental Working Group.

57. Ms. SILVA (Office of the United Nations High Commissioner for Human Rights) emphasized the role of the Office in drafting the voluntary guidelines. In February 2003 the Office had organized consultations to gather inputs from the human rights system and prepare the Office's contribution to the drafting process. Representatives from a number of committees had taken part, including the present Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The Office looked forward to further cooperation with the Committee and all treaty bodies in order to ensure the best possible contribution of the human rights system to the drafting of the voluntary guidelines.

58. Mr. RIEDEL said that the title of the voluntary guidelines highlighted the main causes of conflict in the drafting process. In particular, some States and organizations believed that a rights-based approach was necessary, while others thought that the guidelines must focus on the national implementation of policies and strategies in the field of food security. The preparatory work, including the work of NGOs, had been extremely helpful in resolving such conflicts. It was important to ensure that the existing obligations of States party to the Covenant were not watered down. The guidelines were directed at three distinct groups: States parties to the Covenant, whose legal obligations could not be altered by any voluntary exercise; States not parties to the Covenant; and non-State actors. He stressed the need to ensure that the voluntary guidelines did not replace ratification of the Covenant and that non-State actors were involved in securing the right to food.

The meeting rose at 12.25 p.m.