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SUMMARY RECORD OF THE PUBLIC PART* OF THE 2505th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 30 October 2007, at 4.30 p.m.

Chairperson: Mr. RIVAS POSADA

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* The summary record of the closed part of the meeting appears as document CCPR/C/SR.2505.

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The public part of the meeting was called to order at 4.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS

Working methods (continued)

1. The CHAIRPERSON drew attention to the “Background paper and recommendations” drafted by the Committee’s intersessional working group on strengthening the procedure of follow-up to Views under the Optional Protocol and concluding observations under article 40 of the Covenant (CCPR/C/88/CRP.1/Rev.1) and invited the secretariat to report on progress.
2. Mr. GILLIBERT (Secretary of the Committee) said that the Committee had completed its discussion of sections A to D. Section E concerning recommendations common to follow-up to Views and concluding observations had been discussed at its eighty-ninth session and the section had been expanded in the light of that discussion. The first addition concerned the preparation of in-session press conferences by Committee members in closed meetings with the possible involvement of country rapporteurs. The second concerned the appointment of a committee member to design a media strategy. Mr. Shearer had already submitted a strategy document. The third concerned the involvement of country rapporteurs in consultations with States parties on follow-up to Views and concluding observations. It had also been suggested that country rapporteurs should be involved in missions to States parties in connection with follow-up. The selection criteria for such missions had been expanded to include invitations issued on the initiative of States parties. Lastly, it had been decided that the secretariat should undertake an analysis of the feasibility of follow-up missions.
3. The CHAIRPERSON invited comments on section F concerning recommendations with respect to follow-up to individual complaints.
4. Mr. SHEARER (Special Rapporteur on follow-up to Views) said that the section consisted of five points. The first concerned the desirability of extending the deadline for a response from States parties regarding follow-up action on individual complaints from 90 days to 6 months.
5. The second referred to the chart of compliance with recommendations for follow-up. There were four categories of response: satisfactory response; unsatisfactory response; no follow-up response; and follow-up dialogue still ongoing. He felt that the categorization of a response as “unsatisfactory” might in some cases be unduly blunt and possibly inaccurate. The Committee might consider, for instance, that a State party’s response was inadequate or incomplete or that it failed to address the issues. Alternatively, the State party might reject the Committee’s Views without going into detail. All such responses could be described as unsatisfactory. With regard to the fourth category, in some cases the Committee had been engaged in ongoing dialogue for several years, at which point a State party might decide that further dialogue served no useful purpose and that the matter was closed. An additional category should perhaps be created to reflect that situation, which amounted to a dialogue of the deaf.
6. The third point in section F regarding the annual report was self-explanatory.

7. The fourth merely stated that the Special Rapporteur on follow-up to Views would decide on the extent to which responses were satisfactory and prepare a provisional categorization for submission to the Committee in an interim report.
8. The fifth point referred to the “outcome document” of the Nairobi Judicial Colloquium, according to which treaty bodies should ensure that the ratio decidendi of their decisions was sufficiently clear for States parties.
9. Ms. CHANET objected to the reference to the recommendations of the Nairobi Colloquium, particularly the suggestion that the Committee should cite the jurisprudence of other international bodies in footnotes to its Views.
10. She agreed with the proposal to extend the deadline for a response to six months.
11. She suggested dividing the “unsatisfactory response” category into two subcategories, one of which would describe the behaviour of a State that terminated its dialogue with the Committee unilaterally.
12. She agreed that Committee members should be given the opportunity to raise questions regarding the Special Rapporteur’s decisions on how to categorize States parties’ responses, but lengthy discussions should be avoided.
13. Mr. AMOR supported the extension of the deadline for States parties’ replies concerning follow-up measures.
14. An additional category entitled “partly satisfactory response” should be inserted after “satisfactory response” in the chart of compliance. Also, it should be clear from the chart that the responses provided by States parties concerned compliance with the obligations they themselves had undertaken under the Optional Protocol. In order to reflect that situation, assessments such as “the State party has honoured its obligations”, “the State party has partly honoured its obligations” and “the State party has failed to honour its obligations” might be useful.
15. The CHAIRPERSON said he took it that the Committee wished to approve the proposals contained in paragraphs 1 to 4 of the recommendations with respect to follow-up to individual complaints.
16. It was so agreed.
17. The CHAIRPERSON said that opinions appeared to diverge on the proposals contained in paragraph 5. The Committee might wish to either engage in further discussion at a later point or delete the paragraph altogether.
18. Mr. SHEARER said that reference to the jurisprudence of other international bodies was not an integral part of follow-up to individual complaints, although the Committee might consider, as it had in the past, drawing from case law other than its own when reasoning its decisions. He would, however, not object to deleting the paragraph. It might be preferable to defer further discussion of the issue.

19. Mr. AMOR agreed that paragraph 5 did not pertain to follow-up to individual complaints per se. However, the experience of other treaty bodies and international instances could certainly prove useful. Similarly, treaty bodies with less experience in certain areas should be encouraged to draw on the Committee's jurisprudence when making recommendations to States parties, a practice which could enhance the Committee's status. Rather than deleting the paragraph as a whole, it might be preferable to engage in further discussion in order to identify its potential benefits.

20. Ms. CHANET said that the document was intended to outline ways to strengthen the Committee's own procedures; any suggestion of drawing on the jurisprudence of other bodies was therefore misplaced. In order to convey Mr. Amor's message, the paragraph would need to be reworded.

21. The CHAIRPERSON suggested deleting paragraph 5 on the understanding that the issue involved would be discussed later.

22. It was so decided.

23. The CHAIRPERSON, speaking as former Special Rapporteur for follow-up on concluding observations, introduced section G concerning recommendations with respect to follow-up to concluding observations.

24. The recommendations contained in paragraph 1 concerned the form, presentation and content of the report of the Special Rapporteur. The proposals sought to address the shortcomings of the report in its current format, including the lack of detailed information provided on the situation regarding follow-up and the inadequacy of the chart of compliance. Some efforts had already been made to remedy those shortcomings, and the Committee looked to the new Special Rapporteur for suggestions on ways to improve the procedure further.

25. The Committee might wish to be more flexible regarding the deadline for implementation of its recommendations, as suggested in paragraph 2, so as to take account of the nature and urgency of a given issue.

26. Paragraph 3 concerned the file prepared by the secretariat, the contents of which should be consistent with the reports prepared by the Special Rapporteur.

27. Paragraph 4 highlighted the need for a qualitative analysis of States parties' responses to the Committee's recommendations. At present, the Committee drew its conclusions on the basis of a quantitative analysis of States parties' replies, which identified whether or not the State had addressed all the issues raised. In order to facilitate a more accurate assessment of States parties' implementation of the Committee's recommendations, it might be useful to examine the nature of the response on the basis of criteria which remained to be determined.

28. Taking into consideration relevant information provided by NGOs, as proposed in paragraph 5, might usefully supplement the Committee's work on follow-up.

29. Sir Nigel RODLEY, speaking as Special Rapporteur for follow-up on concluding observations, fully endorsed the recommendations contained in paragraphs 1 to 3. He also strongly supported the idea of establishing a framework for input from NGOs. Obtaining information from sources other than States parties was crucial to an accurate analysis of the situation. It might be best to publish relevant NGO reports on the Committee's website, since their inclusion in the Committee's annual report might not be feasible.
30. The complexity of the follow-up process itself was partly due to the varied nature of the paragraphs chosen for that purpose. Some of the issues identified for follow-up within one year were urgent, while others were chosen because they lent themselves to a rapid response. The choices were not necessarily based on coherent criteria and the paragraphs covered everything from urgent matters to mere requests for information.
31. In the light of that situation, developing a scheme for qualitative analysis was not easy. Assessment categories could include, for example, "blanket dismissal" with "facts denied", "legal stance of the Committee denied" and "legal authority of the Committee denied" as subcategories, and "full compliance" at the other end of the spectrum. Intermediate categories could include "full or partial response on the facts" and "full or partial response on the law"; it should be indicated whether the responses were reasoned or simply asserted. An additional category would be necessary to cover situations where the State party simply declared itself to be in compliance with its own law, without taking cognizance of the Covenant. On the basis of those categories, the nature of responses would need to be analysed in respect of each paragraph, or even in respect of different aspects covered in a single paragraph.
32. If a State party's response was considered to be "in full compliance", the Committee could class that response as "satisfactory", although such cases were rare. Adopting conclusions in cases that did not fall into that category was more difficult. The current practice of finding a "full response" or "partial response" was unhelpful, as those terms were highly subjective. It was difficult to know, for example, how to respond in a situation where the State party provided a full and reasoned response, but disagreed with the Committee on every issue. The same applied to situations where the State party defended its position as legitimate and based on domestic and international law without substantiating that view. The Committee would need to examine those issues closely with a view to identifying ways to assess such situations and take adequate follow-up measures.
33. Mr. AMOR said that the Committee did not systematically verify what effect had been given to previous concluding observations. It was difficult to assess the urgency and seriousness of some questions. Some serious issues, such as polygamy or unfair inheritance laws, could not be tackled urgently, regardless of the good will of a State party. Other issues, such as torture or execution, were both serious and urgent. The Committee should strive to limit itself to matters that were truly urgent, to which a State party could provide a reply within a reasonable deadline, given sufficient political will. Reporting guidelines specified that the second part of periodic reports, as opposed to initial reports, should consist of systematic follow-up to each point raised in the Committee's previous concluding observations. During discussions with States parties, country rapporteurs had the opportunity to highlight points from previous concluding observations that had not been resolved. Follow-up should not, therefore, be considered as an issue separate from reporting and the Committee's consideration of reports.

34. Mr. SHEARER noted that a number of NGOs had requested the right to brief the Committee on follow-up. He suggested that the Committee should consider that request and explore ways of facilitating NGO input in its work.

35. Mr. GILLIBERT (Secretary of the Committee) noted that the NGOs wished to discuss the subject of follow-up during their closed meeting with the Committee on the first morning of each session. The Committee had previously not allowed NGOs to comment on follow-up issues until after the deadline for States parties' replies.

The public part of the meeting rose at 5.35 p.m.