



International Covenant on Civil and Political Rights

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Summary record (partial)* of the 2651st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 29 July 2009, at 11 a.m.

Chairperson: Mr. Iwasawa

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

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Any corrections to the records of the public meeting 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 11.20 a.m.

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/96/2/CRP.1)

1. **Sir Nigel Rodley**, Special Rapporteur for follow-up on concluding observations, introduced his report contained in document CCPR/C/96/2/CRP.1.
2. Commenting first on Yemen, he recommended that a request from the State party for the deadline for submission of its fourth periodic report to be extended from 1 July to 15 August 2009 should be accepted.
3. Referring to Brazil, he said a reminder had been sent to the State party on 6 May 2009; if no further information was received, he recommended that consultations should be scheduled for the Committee's ninety-seventh session.
4. New information had been received from the People's Republic of China, Hong Kong Special Administrative Region (CCPR/C/HKG/CO/2/Add.1), in the form of partial replies. The new headings that the Committee had decided to use at its previous session were shown in paragraph 1 of the document. He recommended that a letter should be sent requesting additional information, stating that the follow-up procedure with respect to certain issues was considered completed due to non-implementation and asking the State party to report on those issues in its next periodic report.
5. Matters concerning the Central African Republic were routine: a reminder had been sent in May 2009 and he recommended that consultations should be scheduled for the next session if no information had been received.
6. Consultations might be used to elicit information when it was not forthcoming; they also gave the Special Rapporteur an opportunity to explain the reporting process to the State party. Occasionally, the Committee received replies that were incomplete or otherwise found wanting, in which case consultations could be used to explore the issues arising out of the replies.
7. Concerning the United States of America, the information that had been received on 14 July 2009 as a follow-up to the partial information received in November 2007 would be translated; he recommended that it should be considered at the ninety-seventh session.
8. Turning to Kosovo (Serbia), he recalled that a letter requesting further information had been sent to the State party; he recommended that a reminder be sent if no further information was received.
9. **Mr. O'Flaherty** asked whether the Special Rapporteur had considered approaching the new authorities in Pristina following Kosovo's change in status. He understood that domestic authority in Kosovo had now returned to a Kosovar Government, although he was not sure of its status in the United Nations. It would be helpful to receive clarification on the constitutional status of the Government.
10. **Ms. Chanet** considered that the designation "Kosovo (Serbia)" was still appropriate within the United Nations.
11. **Ms. Wedgwood** said that the United Nations Interim Administration Mission in Kosovo (UNMIK) had a much scaled-down role and the International Civilian Office was collaborating with the declared independent Government of Kosovo. Given Russia's objections, it was unlikely that Kosovo would be joining the United Nations in the near future.

12. **Mr. Thelin** said it was his understanding that the declaration of independence made by Kosovo in February 2008 had not been fully recognized by all European Union members or by the United Nations. Its status was therefore unchanged and it would be appropriate to retain the designation as it appeared in the report.

13. **Sir Nigel Rodley** said that Mr. Thelin had correctly interpreted the country's formal legal status as far as the United Nations was concerned: Kosovo's position under international law was another matter entirely. As Kosovo was not yet a Member of the United Nations, the relevant State party was still Serbia. He suggested that the secretariat should seek legal advice on whether the Committee was using the correct terminology to describe the particular entity that was bound by the Covenant.

14. Concerning the suggestion by Mr. O'Flaherty that the Committee might contact the authorities in Pristina, he was unclear what the different levels of governance and representation in the State party were. It might be advisable to wait before attempting to conduct further consultations.

15. **Mr. Fathalla** said that the question of Kosovo's status was still pending both in the United Nations and at the International Court of Justice. It would be preferable for the Committee to adopt the same position as the United Nations; it would be unusual if the Committee were to recognize the country.

16. **Mr. O'Flaherty** said he somewhat disagreed with Mr. Fathalla as he considered that the Committee existed not so much within the United Nations system as within the community of States parties. The current situation was unique in that, for exceptional reasons, the Committee had engaged in dialogue with a part of the United Nations Secretariat which had a Security Council mandate in the territory. As the Secretariat no longer had a governance function there, continued dialogue with the entity was probably futile. He agreed with the Special Rapporteur that time should be allowed for legal and constitutional matters to settle down; the Committee could perhaps return to the subject in a year's time.

17. **Ms. Wedgwood** said that the situation was a delicate one; she believed that the current stand-off could continue for another 20 years or so and that the Committee could not leave Kosovo without response for that length of time. The effective authority south of the river in Mitrovica was not Belgrade and was not UNMIK and, given the very significant human rights problems that affected people on the ground there, the Committee would have to engage in some form of dialogue with the effective authorities. As to the position of the Committee, it met in a United Nations building but it was an autonomous treaty body whose members were not United Nations functionaries.

18. **Mr. Fathalla** said that he did not agree with the comments of the two previous speakers. He acknowledged that the Committee was an independent body, but it was one that reported each year to the United Nations General Assembly and was linked to the United Nations system as a whole.

19. **Mr. Thelin** agreed with Mr. Fathalla's observations on the link between the Committee and the United Nations system. Nevertheless, the appropriate response, as the Special Rapporteur had suggested, would be to clarify the legal situation and take no further action for the time being.

20. **The Chairperson** said he took it that the Committee agreed with the statement just made by Mr. Thelin and that it endorsed that portion of the report subject to any modification necessary following the receipt of legal advice.

21. *It was so agreed.*

22. **Sir Nigel Rodley**, referring to Bosnia and Herzegovina, said that consultations had been held with the State party in October 2008 and a reminder sent in May 2009 concerning incomplete information. Similar situations existed with regard to Honduras and the Republic of Korea. He recommended that further reminders should be sent if no information was received from the three State parties.
23. With regard to Ukraine, the recommendation would be to send a further reminder and to initiate further consultations at the ninety-seventh session if no further information was received.
24. New information had been received from Barbados on 31 March 2009. The recommendation would be to send a letter requesting additional information, stating that the follow-up procedure with respect to certain issues was considered completed due to non-implementation and asking the State party to report on those issues in its next periodic report.
25. **Mr. O’Flaherty** asked how the Committee could assess compliance with the recommendation that the State party should consider abolition of the death penalty. Should the Committee deem that a State party had complied with a request to consider an action if it had indeed considered and subsequently rejected a recommendation? The Committee should welcome the fact that Barbados had taken a Cabinet decision to abolish the mandatory death penalty.
26. **Sir Nigel Rodley** said that abolition of the mandatory death penalty had been categorized as “partly largely satisfactory”, and the term “partly recommendations not implemented” applied to the remainder of the recommendation on the death penalty. It might have been sufficient to categorize the State party’s response as “largely satisfactory”.
27. **Mr. O’Flaherty** said that he found the Special Rapporteur’s logic compelling but felt that in future, when drafting concluding observations, the Committee should avoid wording of the kind addressed to Barbados concerning the death penalty, when it had been invited to consider both good and bad options. States parties should be clearly requested by the Committee to undertake or not to undertake a particular action.
28. **Mr. Salvioli**, referring to Mr. O’Flaherty’s remarks, agreed that the concluding observations should be as specific and direct as possible, but in the case of Barbados the request to consider abolition of the death penalty was in line with the Covenant, which did not prohibit it. A specific recommendation had been given to the State party to abolish the mandatory death penalty.
29. **Sir Nigel Rodley**, turning to the action taken by Chile, said that he had met with the State party on 28 July 2009. The delegation had agreed to send information on outstanding issues within one month. He therefore recommended that, if no information had been received by the ninety-seventh session, a reminder should be sent.
30. With regard to Madagascar, a partial reply had been received on 3 March 2009 and had triggered a letter requesting additional information. He recommended that, if no information was received, a reminder should be sent.
31. As to the Czech Republic, a partial reply had been received in August 2008 and the recommendation would be for a further reminder to be sent if no information had been received by the ninety-seventh session.
32. A meeting had been requested with Sudan in June 2009 but no response had been received. The recommended action would be to continue to seek a meeting with the State party.

33. With regard to Zambia, he recommended that, if no response had been received in response to reminders, consultations with the State party should be sought at the ninety-seventh session.

34. The case of Georgia was identical to many: information had been requested in May 2009 and if none was received, a reminder should be sent.

35. New information had been received from the Libyan Arab Jamahiriya on 24 July 2009. He therefore recommended that the reply should be sent for translation and considered at the ninety-seventh session.

36. Additional information had been received from Austria very recently and he recommended that it should be considered at the ninety-seventh session. In the case of Algeria, he recommended that a reminder should be sent requesting additional information. He also recommended that a letter should be sent to Costa Rica requesting additional, more specific information.

37. Tunisia had submitted a partial reply on 16 March 2009 and he recommended that a letter should be sent requesting additional information, stating that the follow-up procedure with respect to certain issues was considered complete due to non-implementation, and asking the State party to report on outstanding issues in its next periodic report.

38. He recommended that reminders should be sent to Botswana, the former Yugoslav Republic of Macedonia and Panama requesting additional information.

39. *The report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/96/2/CRP.1), as amended in the light of the discussion, was adopted.*

Follow-up progress report of the Human Rights Committee on individual communications (CCPR/C/96/4)

40. **Ms. Wedgwood**, Special Rapporteur for follow-up on individual communications, introduced the Committee's progress report on individual communications.

41. Drawing attention to the note to Human Rights Committee members on page 16 of the report, she informed them that the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities had decided to remove Mr. Sayadi and his wife from the "sanctions list" on 20 July 2009.

42. The first case listed in the progress report, involving Algeria, related to violations of due process. The State party had failed to provide follow-up information on the Committee's Views adopted on 14 July 2006 and a meeting scheduled for the ninety-fourth session had not taken place. A new effort should be made to arrange a meeting between the Special Rapporteur and a representative of the Permanent Mission at the ninety-seventh session. The dialogue could be considered ongoing.

43. The second case involved disappearance and failure to investigate in Nepal. The State party had offered the equivalent of 1,896.67 euros in compensation to the author, who was the wife of the disappeared person, submitting that the alleged disappearance would be referred to an independent disappearance commission to be constituted once the necessary legislation had been enacted. While the State party's resolve to establish a mechanism for dealing with enforced disappearances was commendable, it was not acceptable that a thorough and effective investigation into the disappearance and fate of the author's husband should be postponed pending its establishment. The situation was unsatisfactory and the Committee might wish to arrange a meeting with a State party representative at the ninety-seventh session.

44. The third case related to review of conviction and sentence in Norway. The State party had reviewed its legislation and instructed courts of appeal to include the reasons for their decisions in all cases; the author had been awarded compensation. However, he had deemed the compensation awarded insufficient, and his claim for additional compensation was pending. The Committee might wish to discuss what should be considered adequate compensation.

45. In the fourth case, relating to ill-treatment by law enforcement officials in Greece, the author had requested that his case be re-examined by the competent prosecutor. In response to the State party's submission that the author could bring his compensation claim before a domestic court, the author had affirmed that the time limit for such claims had expired. In its Views, the Committee had called for the author to be compensated; the proposal to file for compensation domestically could be interpreted as non-implementation of the remedy recommended and the Committee should decide how to proceed.

46. Turning to the case pertaining to abortion in Peru, she said that the author had sought compensation, an amendment of relevant legislation and guidelines for Peruvian hospitals. The State party had proposed to pay the equivalent of 10,000 dollars in compensation and to introduce a legislative amendment to decriminalize abortions of anencephalic fetuses. The author had considered the action proposed insufficient. The amendment of State party legislation, the issuance of guidelines for hospitals and the author's compensation claim in the amount of 96,000 dollars remained pending. In its Views, the Committee had not specified the amount of compensation payable. The State party was currently considering new abortion legislation, which would be even more restrictive than the original provisions. The Committee might wish to seek further dialogue with the State party.

47. The next case, which dated back to 1997, also involved Peru and concerned prison conditions, ill-treatment in detention and trial by faceless judges. The author had initially been sentenced to life imprisonment, retried in 2006 and sentenced to two years' imprisonment and a large fine, and, on appeal, sentenced to 35 years' imprisonment by the Supreme Court. It was unclear whether the case related to the subject matter of the Views of the Committee. The Committee might wish to ascertain whether the author's retrial complied with the recommended remedy, in which case the matter should be considered closed. It would also be important to enquire about the reasons for the surprisingly heavy sentence handed down by the Supreme Court, compared with the appeal court sentence.

48. The next case concerned violation of double jeopardy in the Russian Federation. The Committee's Views had been published and the State party had instructed the Supreme Court to ensure that that type of violation would not occur again. The author's response had been transmitted to the State party with a deadline for comments of 25 August 2009. The Committee could therefore consider the dialogue ongoing.

49. The next case concerned undue delay in review of conviction and sentence by a higher tribunal in the Philippines. The State party had submitted information concerning the action taken, which had been sent to the author with a two-month deadline for comments. That deadline had not yet been reached so the Committee could consider the dialogue ongoing.

50. The last case related to the allocation of fishing licences in Iceland. The State party had provided a detailed response to the Committee's Views, explaining that changes to the fisheries management system could only be effected in the long term. With regard to the Committee's recommendation to grant adequate compensation, the State party had submitted that paying compensation to the authors could result in a run of claims for compensation, which could have unforeseeable consequences for the economic stability of Iceland. The State party had further drawn attention to the global financial crisis and its

disproportionate impact on Iceland, and had requested a wider time frame for fulfilling the obligations deriving from the Committee's Views.

51. **Mr. O'Flaherty**, referring to the communication involving Nepal, said that the steps taken by the State party were encouraging and demonstrated good will. Also, considering the low average income in the State party, the compensation payment offered to the author was not insignificant. He nevertheless agreed that the dialogue should be considered ongoing.

52. **Ms. Wedgwood** agreed that the State party's intention to establish an independent disappearance commission was commendable. However, there was a danger that the competent State institutions might shirk their responsibilities by delegating implementation of the Committee's recommendations to another body, and later blame that body for non-compliance.

53. **Mr. Salvioli** concurred. It was also important to bear in mind that the crime of enforced disappearance was ongoing.

54. **Mr. O'Flaherty**, turning to the case relating to Norway, said he thought it inappropriate to bring the Committee's considerations on remedies to the Inter-Committee Meeting, as suggested in the section on "Further action taken/required". Rather than conferring with other treaty bodies, the Committee should schedule a discussion on remedies at its ninety-seventh session, so as to arrive at a more systematic understanding of, and approach to, the application of remedies in its own practice.

55. **Ms. Wedgwood** said that, while she supported the proposal to hold a discussion on remedies, consultation with other treaty bodies would not go amiss.

56. **The Chairperson** suggested that the reference to the Inter-Committee Meeting should be amended to reflect the views expressed by members.

57. **Mr. Salvioli**, referring to the case relating to abortion in Peru, said that the Special Rapporteur should impress upon the State party that amending legislation to make it even more restrictive would be contrary to the Views adopted by the Committee.

58. **Mr. Rivas Posada**, speaking on the case pertaining to retrial in Peru, said that in future recommendations the Committee might wish to bear in mind that retrial was not always an ideal remedy for violations. As the present case showed, sentences handed down in a retrial might be more severe than in the original court.

59. **Mr. O'Flaherty**, referring to the Iceland case, recalled that the Committee had previously found that the only outstanding issue was that of compensation. The text should be amended to reflect that circumstance.

60. **Ms. Chanet** proposed that the Committee should draw on the two reports by the Special Rapporteurs when preparing its press conference statements, as they provided important insights into States parties' compliance with the Committee's recommendations. If done judiciously, publicizing such information might help encourage non-compliant States to be more cooperative. The information contained in the reports should also be included in the compilation submitted to the UPR mechanism.

61. *The follow-up progress report on individual communications (CCPR/C/96/4), as amended in the light of the discussion, was adopted.*

The discussion covered in the summary record ended at 12.45 p.m.