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International Covenant on Civil and Political Rights

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Human Rights Committee
100th session

Summary record of the 2772nd meeting
Held at the Palais Wilson, Geneva, on Friday, 29 October 2010, at 3 p.m.

Chairperson: Ms. Majodina (Vice-Chairperson)
later: Mr. Iwasawa (Chairperson)

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The meeting was called to order at 3.10 p.m.

Celebration of the 100th session of the Human Rights Committee (*continued*)

1. **The Chairperson** invited Mr. Antonio Cançado Trindade, Judge of the International Court of Justice and former President of the Inter-American Court of Human Rights, to address the meeting.

2. **Mr. Cançado Trindade** said that the ceremony to mark the 100th session of the Human Rights Committee was a significant day for all those devoted to the international protection of human rights. The Committee had been faithfully monitoring compliance with the Covenant since its establishment by means of its Views on communications under the Optional Protocol, its concluding observations on States parties' reports and its general comments.

3. He was particularly honoured to be invited to address the Committee on the occasion of its 100th session. More than three decades previously he had assisted the former Division of Human Rights in processing the first set of communications, most of which had concerned Uruguay. Many parts of South America had been plagued in the late 1970s by authoritarian and repressive regimes, which had become one of the earliest challenges faced by the Committee. Since then it had made a significant contribution in all continents to the international protection of human rights.

4. The Committee's handling of communications clearly illustrated its interpretation of Covenant provisions concerning the absolute prohibition of torture or ill-treatment, the prohibition of slavery, servitude and forced labour, and a wide range of protected rights and fundamental freedoms. In its Views on communications it had dealt with crucial issues such as non-derogable rights and states of emergency. In its Views in the cases of *Broeks v. the Netherlands* and *Zwaan-de Vries v. the Netherlands* in 1987, the Committee had found a breach of article 26 of the Covenant in respect of social security benefits, and in a pioneering way had upheld an autonomous right to non-discrimination, paving the way for further developments in that regard.

5. In tackling the issue of arbitrary action by public authorities in its Views, the Committee had avoided equating arbitrariness with action "against the law". In the *Marques de Morais v. Angola* case in 2005, it had opted for a broader interpretation that encompassed elements of injustice, lack of due process of law, inappropriateness and lack of predictability. In the *Mojica v. Dominican Republic* case in 1994 and in the *Tshishimbi v. Zaire* case in 1996, the Committee had warned that an interpretation that would allow States parties to tolerate, condone or ignore threats made by public authorities to the personal liberty and security of non-detained individuals under the jurisdiction of States parties concerned would render the Covenant guarantees ineffective.

6. In its concluding observations on State party reports, the Committee had clarified the scope of the rights protected under the Covenant and of the obligations incumbent on States parties. It had also demonstrated the impact of international human rights law on public international law, for instance by acknowledging the continuity of human rights obligations in cases of State succession.

7. The general comments of the Human Rights Committee, of which there were 33 to date, had provided invaluable guidance for the interpretation of various provisions of the Covenant. The principle of humanity, which was usually invoked in the domain of international humanitarian law, was addressed in general comments Nos. 9 and 21 on article 10 of the Covenant concerning humane treatment of persons deprived of their liberty. As the Committee rightly stated in general comment No. 31, international humanitarian law and international human rights law were complementary, not mutually exclusive. The principle of humanity also permeated the Committee's consideration of the

fundamental right to life *latu sensu* in its general comments Nos. 6 and 14. The Committee stressed the supreme duty to prevent wars and other acts of mass violence, and called on all States to rid the world of the threat of nuclear weapons. In its general comment No. 18, the Committee focused on the wide scope of the fundamental principle of non-discrimination, pointing out that while article 2 confined the rights to be protected against discrimination to those enshrined in the Covenant, article 26 went much further, providing an autonomous right and prohibiting discrimination in law or in fact in any field regulated and protected by public authorities.

8. In its recent lengthy general comment No. 32, the Committee had identified the right to equality before the courts and the right to a fair trial as key elements of human rights protection and means of safeguarding the rule of law. Article 14 of the Covenant, according to the Committee, contained guarantees that States parties must respect, regardless of their legal traditions and their domestic law. Any deviation from the fundamental principles of a fair trial, encompassing the presumption of innocence, was prohibited at all times. The whole issue was linked to access to justice, as article 14 encompassed the right of access to the courts and to equality before them. That right was not limited to citizens of States parties but must be available to all individuals, regardless of nationality or statelessness or whatever their status, who found themselves in the territory or subject to the jurisdiction of the State party. The Committee added that the guarantees of article 14 applied in all circumstances, including when domestic law entrusted a judicial body with the task of deciding on expulsions and deportations.

9. General comment No. 15 stated that article 13 of the Covenant clearly aimed at preventing arbitrary expulsions, since it stipulated that expulsions could only be carried out "in pursuance of a decision reached in accordance with law", without discrimination, and that the alien should be given the means to appeal against expulsion.

10. Some general comments on both substantive and procedural issues had influenced other human rights protection mechanisms, both within the United Nations and at the regional level. For instance, he had cited general comment No. 24 on issues relating to reservations to the Covenant or the Optional Protocol in his separate opinion on the *Blake v. Guatemala* case, which had been decided shortly afterwards by the Inter-American Court of Human Rights.

11. Throughout his term of office as President of the Inter-American Court of Human Rights (1999–2004), he had borne in mind the Committee's keen awareness of the time factor in the settlement of cases raising issues of competence *ratione temporis*. In general comment No. 26 on the continuity of obligations, the Committee boldly stated that the Covenant was not the type of treaty which, by its nature, implied a right of denunciation. It insisted that international law did not permit a State which had ratified, acceded or succeeded to the Covenant to denounce it or to withdraw from it. The rights enshrined in the Covenant belonged to the people living in the territory of the State party. Such protection devolved with territory and continued to belong to them, notwithstanding any change in the Government of the State party, including dismemberment into more than one State, State succession or any subsequent action by the State party designed to divest them of rights guaranteed by the Covenant.

12. The general obligation on States parties to respect and ensure the rights recognized by the Covenant had been examined by the Committee in its general comment No. 31. Such general obligations, added to the specific obligations in respect of each protected right, were all obligations *erga omnes partes*, since article 2 made it clear that every State party had a legal interest in the performance by every other State party of its obligations. The enjoyment of the protected rights was to be secured to all individuals, irrespective of circumstances, under the jurisdiction of the State party. States parties' domestic law and practices should therefore be aligned with the Covenant and provide accessible and

effective remedies to individuals to vindicate the protected rights. General comment No. 31 further asserted that States parties were to secure the direct applicability of the Covenant provisions in domestic law and their interpretative effect in the application of domestic law. Article 2 (3) provided for reparations to individuals whose Covenant rights had been violated. The Committee noted that reparations could consist of restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations. The Committee further espoused the view that the individual's right to an effective remedy could, in certain circumstances, require States parties to provide for and implement interim measures to avoid continuing situations, and to endeavour to repair at the earliest possible opportunity any harm that might have been caused by such violations.

13. The Committee had thus aptly identified, in its interpretation of the Covenant, the proper time and space dimensions. An example of the former was its endorsement of the notions of continuing situations and persistent effects and, in certain circumstances, the notion of potential victims. An example of the space dimension was its endorsement of the extraterritorial application of the protected rights.

14. The Committee's hermeneutics had been geared to a system of protection that was ineluctably victim-oriented. Thus, it had pursued a hermeneutical criterion grounded on the principles of *pro persona humana* and *pro victima*. It had adopted a holistic approach, relating the protected rights among themselves in a manner conducive to the acknowledgement of their mutual interdependence and indivisibility. It had also worked in the framework of the universality of human rights.

15. Successive judgements of the European Court of Human Rights had referred in recent years to the Committee's Views on communications. The Inter-American Court of Human Rights had also referred in a number of judgements to its Views and general comments. He was confident that the African Court on Human and Peoples' Rights would be no exception to the trend.

16. The International Court of Justice had referred in recent years, in both contentious cases and advisory opinions, either to relevant provisions of the Covenant or to the work of the Committee. In its judgment in the case concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Uganda*, 2005), the Court had held that the Covenant provisions were applicable to the case. In its judgment in the case of the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007), the Court had cited articles 2 and 3 of the Covenant in support of its interpretation of the meaning of the word "undertakes" in the Convention. In its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004), the Court had held that the Covenant was not unconditionally suspended in times of conflict, and that it applied outside the States parties' territory when they exercised their jurisdiction there, as emerged from the legislative history of the Covenant and the consistent practice of the Human Rights Committee. In its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the Court had referred to article 6 of the Covenant. In his own separate opinion appended to the Court's Advisory Opinion on the "Accordance with international law of the unilateral declaration of independence in respect of Kosovo", he had referred to article 1 of the Covenant and to the Committee's position on States' automatic succession in respect of human rights treaties and on the extraterritorial application of human rights.

17. It could be concluded from the foregoing that the Committee's contribution to the evolution of international human rights law had been remarkable. He presented his compliments to the Committee on the occasion of its 100th session, and expressed

confidence that it would continue to render a valuable contribution to the cause of human rights during its next 100 sessions.

18. **The Chairperson** invited Mr. Eibe Riedel, Professor of the Graduate Institute of International Studies and International Development and member of the Committee on Economic, Social and Cultural Rights, to address the meeting.

19. **Mr. Riedel** thanked the Committee for inviting him to address its meeting to celebrate the 100th session. All members of the treaty bodies could be proud of the Committee's remarkable achievements in recent decades. It had staunchly defended human rights, sometimes in a highly politicized climate, and had served as a model for the other international human rights treaty bodies. Its precise and often groundbreaking concluding observations on State party reports and its Views on communications under the Optional Protocol had advanced people's understanding of the nature and scope of the obligations incumbent on States parties. Many of its suggestions, recommendations and views had also inspired the work of the other treaty bodies, despite the slightly different focus stemming from treaty-specific factors. At times, particularly in areas where rights overlapped, healthy competition of ideas had taken place. The Inter-Committee Meetings and the Chairpersons' meetings could take up issues on which a uniform approach would seem to be beneficial.

20. Over the past 40 years the Committee had greatly assisted in clarifying the meaning of obligations, explaining to States parties the reach of reservations and derogation clauses, and assessing the scope of monitoring, even during armed conflicts. The methodology used had always been convincing and had frequently been adopted by the other treaty bodies.

21. The Committee's general comments and its Views on communications had also greatly clarified the content of Covenant human rights guarantees. Thanks to the gradual expansion of the Committee's jurisprudence, vague guarantees had been meticulously defined in a manner comparable to judicial pronouncements under domestic or regional human rights law. Of course, decisions taken at the international level were as yet unenforceable at the national level. The dispute as to whether the Committee's findings were "decisions" or simply "recommendations" was actually somewhat academic. What mattered was that, even in the strict legal sense, non-binding but recommendatory findings had almost the same effect in practice as binding court decisions because that was how the media, parliaments and Governments treated such findings in practice. Some States parties insisted, however, that they were not bound by the Committee's Views but could ignore them as non-binding recommendations. As the Committee had rightly pointed out in its general comment No. 33 and the Committee on Economic, Social and Cultural Rights in its general comment No. 3, States parties were clearly expected to act in accordance with good faith, as required by article 26 of the Vienna Convention on the Law of Treaties. It would be contrary to the object and purpose of the Covenant and the Optional Protocol if States parties implied that they were devoid of any obligations.

22. Discussion had also focused on the legal nature of views when the text of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights had been negotiated. One question raised was the extent to which national sovereign parliaments had discretion when it came to incorporating Covenant obligations into domestic law. The Committee on Economic, Social and Cultural Rights had strongly argued that States parties had a clear legal obligation to do so. However, the State party was free, at least in the State reporting procedure, to make considered policy choices that did not infringe fundamental Covenant guarantees.

23. The work of the Human Rights Committee could be regarded as successful "piecemeal social engineering" aimed at promoting human rights by clarifying the obligations that States parties were required to respect, protect and fulfil, and at ensuring that its Views resembled decisions of judicial bodies as closely as possible. In its general

comment No. 33, the Committee had stated that, although its function in considering individual communications was not that of a judicial body, the Views issued exhibited some important characteristics of a judicial decision. They were arrived at in a judicial spirit by virtue of the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions. To use common-law terminology, the legal obligations flowed from the text of the Covenant and the Optional Protocol, but the concluding observations, recommendations and general comments, while strictly speaking legally non-binding documents, could be regarded as persuasive authority if convincingly argued.

24. The treaty bodies' general comments had been well received and the structure of State party reports had become more focused as a result.

25. Part I of both international Covenants concerned self-determination. While neither Committee had dealt with article 1 as a stand-alone right, both had discussed the issue and made recommendations on it in the context of other articles. Self-determination rarely arose, however, in the communications procedure because individuals were highly unlikely to claim that their right to self-determination had been violated. On the other hand, the lack of autonomy rules and failure to accept participation rights and specific aspects of, for instance, the right to education and freedom of expression could add weight to the alleged violation of a specific right. An attempt had been made, in the light of Human Rights Committee practice, to keep article 1 issues outside the scope of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, but it had eventually been retained. It remained to be seen whether that decision would affect ratification. He pointed out to critics that his Committee would probably follow Human Rights Committee practice and reserve self-determination for the State party reporting procedure or for Human Rights Council mechanisms. As a highly political issue, self-determination was usually dealt with in high-level intergovernmental debates in the General Assembly or even the Security Council.

26. Where possible, the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights had been incorporated in full in the Optional Protocol to the other Covenant. Despite the different procedures developed during the 1960s at the height of the cold war, human rights practice had slowly but steadily moved towards placing the core content of the guarantees under the two Covenants on an equal footing. Thus, all rights under the International Covenant on Economic, Social and Cultural Rights were, in principle, capable of being applied judicially at the national level and did not merely represent programmatic statements of policy, as some States argued. That implied, however, the acceptance of the tripartite obligation to respect, protect and fulfil, and of the notion of a core content of each of the rights postulated as the existential minimum or "survival kit" for each human being.

27. From the date of entry into force of the two Covenants in 1976 until the convening of the World Conference on Human Rights in 1993, it had been argued that civil and political rights and economic, social and cultural rights were different and should be treated differently, but that position no longer represented the general opinion of the international human rights community. The Vienna Declaration and Programme of Action stated unequivocally that all human rights were universal, indivisible, interdependent and interrelated. It added that the international community must treat human rights globally in a fair and equal manner, on the same footing and with equal emphasis. Yet some States still tried to treat the two sets of rights differently. In all its general comments since general comment No. 3 of 1991, the Committee on Economic, Social and Cultural Rights had consistently maintained that, in the absence of basic survival rights such as equal access to workplaces, fair working conditions, social security, health facilities, basic education guarantees and cultural participation rights, civil and political rights would lack vital

underpinnings. Freedom of speech without access to a basic food supply and basic health-care services would be almost meaningless.

28. The right to life was guaranteed under article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights. In the practice of the Human Rights Committee, the right to life had proved to be the most important generic provision and had occasionally included economic, social and cultural rights within its scope. His own Committee had addressed certain issues of relevance to economic, social and cultural rights under the heading of the right to life. It was quite evident that without an effective guarantee of the right to life all other rights would be almost meaningless. As Manfred Nowak, Rosalyn Higgins, Sir Nigel Rodley, Bertrand Ramcharan and many others had pointed out, it was a right that could not be derogated from, even in times of emergency. Some commentators even accorded it *jus cogens* status. From the outset, the Human Rights Committee had rejected a narrow interpretation of the right whereby it would encompass only a right to protection from arbitrary killing. In general, however, it concentrated, especially under the Optional Protocol, on the negative dimension of rights. Positive dimensions tended to be addressed only in connection with the obligation to protect, for instance in connection with prison conditions and access to justice.

29. In recent years, however, the Committee had raised broader questions pertaining to the right to life, such as the infant mortality rate, life expectancy and the highly controversial issue of abortion. In its concluding observations on Peru, for example, it had noted that clandestine abortions were the main cause of maternal mortality. Other issues such as harmful traditional practices, the fight against HIV/AIDS and even environmental health and nutritional matters were deemed to flow from the right to life. In the case of *Huamán v. Peru*, a hospital had refused to perform a therapeutic abortion of an anencephalic foetus, although the operation was permitted under existing legislation and despite the fact that a physician had stated that the mother, who was still a minor, was exposed to a life-threatening risk and that she would suffer severe psychological damage. The Committee had found violations of various articles but had not referred specifically to article 6. In its general comments Nos. 6 and 14 on the right to life, the Committee had gone quite far in detailing measures to protect life. However, they merely constituted recommendations and there was no guarantee that States parties would voluntarily act upon them.

30. The Committee on Economic, Social and Cultural Rights had had ample opportunity to reflect issues pertaining to the right to life under its own Covenant provisions. Its general comment No. 14, for example, dealt with the right to health. The Committee had always insisted that there were core obligations that all States, rich or poor, must fulfil if they wished to avoid violating the right to health. They included: access to health facilities; access to a minimum supply of food that was nutritionally adequate and safe; access to basic shelter, housing and sanitation, and to an adequate quantity of safe drinking water; and access to essential drugs as defined by WHO. Such obligations could be fulfilled by all States parties, even those in dire financial straits. The parameters of non-discrimination and equality were not heavily resource-dependent. If States parties were unable to fulfil their obligations, they should seek international cooperation and assistance, in accordance with article 2 (1) of the Covenant.

31. Concurrent endeavours by the Human Rights Committee to read the right to health into the International Covenant on Civil and Political Rights via the right to life were, in his view, utterly justified, at least until such time as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights entered into force.

32. He congratulated the Committee on its exemplary practice and expressed the hope that its cooperation with its fellow treaty bodies, particularly his own Committee, would

continue to thrive. He wished the Human Rights Committee every success in its next 100 sessions.

33. **Mr. Ramcharan** (Former Acting and Deputy United Nations High Commissioner for Human Rights) said that, in 1947, the Commission on Human Rights had pledged to establish an international bill of human rights made up of the Universal Declaration of Human Rights, the two international human rights covenants and measures of implementation. It was that vision that had led to the International Covenant on Civil and Political Rights. At the drafting stage, emphasis had been placed on the need for the Covenant to have meaning for ordinary people in their daily lives, and to set common standards of achievement worldwide. That had resulted in the fundamental norms enshrined in the Covenant, and the principle of humanity which underpinned the entire instrument.

34. There had been great excitement at the entry into force of the Covenant, which had required significant skill on the part of the first Committee members in the political context of the cold war. In order to understand how the Covenant had developed, he recommended that students of human rights law should consult document A/2929, a commentary on the *travaux préparatoires* of the two international Covenants. Moreover, the Third Committee of the United Nations General Assembly had debated each article of the Covenant between 1954 and 1966, and detailed reports of those debates were available. He recommended that efforts should be made to publish document A/2929, together with those reports, in order to disseminate information on the history of the Committee and the Covenant. He also called on the representative of Switzerland, the current President of the General Assembly, to encourage the Assembly to issue a statement marking the significance of the present commemoration.

35. The Human Rights Committee, more than any other human rights body in the United Nations, had given content to the contemporary concept of human rights protection in international law. It had shown remarkable foresight on international public-order dimensions of protection, resulting in the concept of norms of international public order becoming famous in international law. The Committee's general comment on the legality of the possession and use of nuclear weapons, adopted in 1984 at the height of the cold war, had been a fundamental contribution to the contemporary protection concept. The Security Council had recently devoted a meeting to discussing the elimination of nuclear weapons; the Committee had been way ahead of any other international body on that issue.

36. In addition, in its concluding observations, its decisions under the Optional Protocol and its general comments, the Committee had consistently clarified and advanced numerous other aspects of international human rights law. It had helped to establish the meaning of the national protection system that every Government was expected to put in place and nurture. It required that the constitutional, legislative, judicial, educational, institutional and preventive architecture of a country should be in conformity with international human rights law.

37. The Committee had also made landmark contributions to the preventive dimensions of protection, requiring Governments to show that they had in place laws, institutions and policies designed to prevent violations of human rights, especially gross violations. It had clarified the law on mitigatory and curative protection, calling on States parties to bring human rights violations to a speedy end the moment they came to a Government's knowledge. The Committee had developed the law on remedial and compensatory protection; its jurisprudence under the Optional Protocol was one of the richest on remedies and compensation. In addition, it had established the legal principle of contemporaneity in human rights protection, requiring that the law should be interpreted and applied in the light of contemporary circumstances. It had therefore made the law of human rights protection a living law and contributed to the progressive development of human rights international law.

38. In the future, the Committee should be aware of the leadership responsibilities it should discharge in the quest for global human rights protection. It held a position of unparalleled importance, given that the human rights treaty bodies currently constituted the most important pillar of human rights protection. Their importance came from the fact that they represented the law, and the Committee had pride of place in that context. The treaty bodies were called upon to ensure that national protection of human rights was in accordance with norms of international public policy, international customary law and the law of specific treaties. He invited the Committee to reflect on how it could perform that leadership role in a rapidly changing world and how its activities could become better known worldwide to ensure they had a practical impact on the national protection of human rights.

39. The Committee should also publish periodically its understanding of the requirements of the national responsibility to protect human rights. To date, the concept of the responsibility to protect had received most attention from the perspective of the international responsibility to protect, whereas the true emphasis should be on national responsibility. It would be helpful for the United Nations Secretariat or an academic institution to draw up a periodic world report on the national responsibility to protect based on the Committee's consideration of country reports and petitions under the Optional Protocol.

40. As the Committee developed its work and its role in the future, it should consider how it could improve preventive human rights strategies. While it had rightly placed emphasis on the duty of Governments to prevent violations, it should now focus on the need for broad-based prevention strategies. It was imperative that it considered how its core jurisprudence could be made available to judges worldwide in local languages, possibly with the help of institutions such as the International Bar Association and the International Commission of Jurists. Given that efforts to develop human rights education should also be influenced by the Committee's work, he suggested that it consider publishing for use by teachers a simple guide on the Covenant and its place in the universal culture of human rights. The entrenchment of a universal human rights culture worldwide remained one of the most pressing challenges of the human rights movement.

41. **Ms. Motoc** said that the Committee's current commemoration was an opportunity to reflect on the human condition, which was fundamentally linked to the Committee's vision of human rights. The Committee had never elected a member from Eastern Europe as its Chairperson; that region had in fact produced important literary and philosophical responses to totalitarianism and the Holocaust.

42. In the future, the Committee should strive to ensure that individual States and peoples had the means to interpret the requirements of the Covenant and the universality of human rights according to the internal logic of their own cultural development. It should also endeavour to raise its public profile, which would require increased transparency in its work and more emphasis on cooperation with NGOs. Commending the initiative to create a focal point for NGOs, she urged the Committee to establish a focal point for States parties, as many of them continued to lack the means to access the Committee's work. Relations between national human rights institutions and the Committee should also be strengthened. In order to avoid falling victim to the fragmentation of the United Nations human rights system, it would be advisable for the Committee to increase its cooperation with the Human Rights Council, while maintaining its juridical excellence and impartiality.

43. **Mr. Amor** said that the treaty bodies had been established on the basis of a visionary attitude of optimism: the adoption of the core human rights treaties, and their ratification and implementation by States demonstrated the desire to improve the situation of human rights around the world and to strive for a better future for all. Considerable progress had been made since the establishment of the treaty body system. Despite the

passage of time, the objectives of the treaty bodies had remained the same. Owing to the increasing size of the system, however, resources were becoming limited while the workload continued to grow. A solution to that problem must be found if the impetus of the treaty bodies' work was to be maintained. At the same time, States were ratifying an increasing number of treaties and were struggling to meet their reporting obligations. Consideration must be given to how to assist them and avoid duplication of work. While greater harmonization was required in the working methods of the treaty bodies, the idea to establish a permanent standing treaty body was, at present, premature and inappropriate.

44. **Mr. O'Flaherty** encouraged States to pay close attention to the relationship between the Human Rights Council, in particular the universal periodic review (UPR) process, and the treaty bodies during the review of the Council, which was currently under way. Efforts should be made to maintain a distinction between the UPR and the treaty body system, with an emphasis on the autonomy and complementarity of those two systems. The review of the Council should address the potential problem of UPR recommendations being inconsistent with treaty body findings. Consideration should also be given to how the national consultative process for the UPR procedure could be broadened to contribute to reporting to the treaty bodies. The need to harmonize follow-up to UPR recommendations and treaty body recommendations must be taken into account in order to give States a coherent human rights message.

45. Turning to the question raised by the representative of Algeria on the consideration of communications, he said that in certain cases admissibility and merits were considered separately. Urgency was a key factor in the consideration of communications since lives were often at stake. Procedures must therefore not be developed that prolonged the risk for individual complainants. The Committee was not inviting the Executive to compete with the Judiciary in any State. Since it was a treaty body, the only entity with which the Committee could engage was the State, and the only way a State could engage with the Committee was through the Executive. The Committee's general comments were made available to States when still in draft form and States were able to proffer opinions on those drafts.

46. He welcomed the comments from the spokesperson for national human rights institutions, in particular about the need for those institutions to deepen their relationship with the Committee. The Committee was particularly grateful for the efforts of human rights NGOs.

47. Turning to the question of the visibility of the Covenant, he said that States often overlooked the second Optional Protocol to the Covenant aiming at the abolition of the death penalty. More States parties should accept the individual complaints procedure, and all States parties should work with the Committee to promote knowledge of the Covenant at the national level. States must comply with the procedures of the Committee, in particular their reporting obligations, since many were several years late in submitting their reports. He urged the States Members of the United Nations that had made the existence of the Committee possible to grant it the resources it required to fulfil its mandate.

48. **Mr. Rivas Posada** said that the present meeting was an opportunity for the Committee to take stock of its work and look to the future. One of the main challenges facing the Committee was to structure, organize and rationalize the role played by NGOs. The Committee was receiving increasing amounts of information from international and national NGOs. That information was not being organized or used efficiently. The establishment of a centre for civil and political rights in Geneva was a significant step towards coordinating the activities of the NGOs. The Committee must make particular efforts to manage its use of information from non-governmental sources. One of the major challenges for the future of the Committee would be to establish a balance between the consideration and processing of information from States and that from civil society, in

order to ensure that the best possible use was made of all information at the Committee's disposal.

49. **Mr. Salvioli** said he agreed with Mr. Riedel on the need to link civil and political rights with economic, social and cultural rights. The Human Rights Committee must be critical of its own work and always keep in mind the progress that remained to be made. He wished to hear Mr. Cançado Trindade's view on how to promote the interdependence of human rights in the Committee's jurisprudence. He wondered how the Committee could improve its decisions on the incompatibility of domestic provisions with the provisions of the Covenant. There must be cross-referencing between the treaty bodies, which must consider each other's jurisprudence in order to work towards regulations that best guaranteed and protected the rights of victims.

50. **Ms. Keller**, responding to Mr. Badinter and Mr. Ramcharan, said that the Swiss Minister for Foreign Affairs had announced that the abolition of the death penalty would be a key element of Switzerland's foreign policy.

51. **Mr. Fathalla** said that the conditions described by Mr. Bedjaoui applied not only to Africa but also to the rest of the world, so consideration should be given to how to address the death penalty in those circumstances. Human rights instruments must be made more effective with limited resources. The implementation of existing instruments should be the key priority, rather than the development of new instruments. The Covenant was a comprehensive document that covered all human rights issues, many of which were duplicated in other legal instruments. Coordination was required between the treaty bodies and all other United Nations bodies, including the General Assembly, in order to avoid duplication of human rights instruments. Particular attention should be given to the follow-up measures taken by treaty bodies. In the case of the Human Rights Committee, follow-up methods were theoretical. More resources should be allocated for country visits in order to ensure more practical follow-up.

52. **Sir Nigel Rodley** said it was regrettable that Committee members' travel plans had made it necessary to leave NGO contributions until the end of the present meeting. He welcomed the developments in treaty body interaction with NGOs over recent years, and the increased consideration given to information provided by non-governmental sources. He expressed gratitude to the guest speakers who had participated in the present meeting, and welcomed the reminder from Algeria about the need to be self-critical and review the Committee's practices. The Committee often reviewed its working methods. He hoped that the Committee would soon begin to review its older general comments, in particular those on the right to life and arbitrary detention. The Committee was committed to improving its consultations with NGOs, whose contributions were particularly valuable.

53. **Mr. Taran** (International Labour Organization), congratulating the Human Rights Committee on the occasion of its landmark 100th session, said that ILO and its tripartite constituency attached particular importance to the universality, inalienability and indivisibility of human rights. To those three principles should be added a fourth: that of complementarity – not only of all the rights embodied in the core United Nations human rights treaties among themselves but also between those rights and international labour standards. Such standards were a component of international human rights law that encompassed civil and political as well as economic, social and, in some cases, cultural rights. The complementarity between the ILO labour standards and the rights guaranteed in the core treaties was crucial to the realization of both.

54. Nowhere was such complementarity more integral than in respect of the freedom of association and the effective recognition of the right to collective bargaining, which constituted one of four principles outlined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which all 183 member States of ILO had pledged to uphold

and implement. Freedom of association formed the basis for the realization of other human rights, particularly those pertaining to the world of work. It was through the freedom to join associations, notably trade unions, and collectively to articulate demands and negotiate with employers and Governments that working people could obtain decent work, which was defined as decent working conditions, remuneration, social protection and social security. In fact, decent work provided the material basis for the realization of other human rights.

55. Complementarity was also reflected in the cooperation between the ILO Committee of Experts on the Application of Conventions and Recommendations, which was the ILO supervisory mechanism, and the United Nations human rights treaty bodies. The Committee of Experts routinely reported to a number of treaty bodies and actively contributed its expertise and experience to their deliberations. By the same token, the Committee of Experts often cited the comments, opinions and case law of the treaty bodies when examining States parties' reports on their implementation of international labour standards. Such cooperation pointed to an opportunity to further enhance cooperation between the ILO supervisory mechanism and the Human Rights Committee. He looked forward to the celebration of the Committee's 200th session in a world of universal, complementary and realized human rights.

56. **Mr. Mutzenberg** (Centre for Civil and Political Rights) said that the Committee's working methods had evolved significantly since its first session in 1977. Indeed, the Committee had evolved from a body that merely received the reports of States parties to one whose concluding observations were increasingly detailed and contained specific recommendations for changing legislation or practices considered to be inconsistent with the Covenant. Yet the Committee's concluding observations could stand to be made even more explicit, and they would have a greater impact if they were cross-referenced with similar observations by other treaty bodies.

57. Civil society's role in the reporting process had also evolved and had become institutionalized. The Centre for Civil and Political Rights had been established in June 2008 precisely in order to strengthen the ties between civil society organizations and the treaty bodies. On the occasion of the 100th session of the Human Rights Committee, the Centre had published a guide on the reporting procedure and the role of civil society. Ties between the Committee and NGOs could be strengthened further if the Committee met with NGOs during its sessions. The Committee might wish to consider, for example, allocating an hour to NGOs in advance of each consideration of a State party report, as was the practice of the Committee against Torture.

58. States parties' follow-up to the Committee's concluding observations was often hampered by recommendations that were too vague or could not be feasibly implemented within the 12-month period allotted by the Committee. Ideally, the Committee should issue only recommendations whose implementation was measurable, thereby facilitating the work of the Special Rapporteur for follow-up on concluding observations. In that connection, additional resources should be allocated in order to enable the secretariat to offer greater support to the Special Rapporteur.

59. Other opportunities for improvement were offered by the possibility of continuing to develop follow-up field missions by Committee members. Pursuing in the field the dialogue it had begun with States parties in Geneva or New York would allow the Committee to gain a better understanding of measures taken or not taken by the State party and would ease the burden of the Special Rapporteur for follow-up, who could draw on the findings of the visits in assessing follow-up in the States parties concerned.

60. **Mr. Heiler** (Amnesty International) said that, since its inception, the Human Rights Committee had often been at the forefront of the development of international human rights law. Yet despite its many achievements, important challenges remained for States parties in

fulfilling their obligations under the Covenant, for the improvement of the Committee's working methods and for the contribution of civil society to the process. There were still some States that had only signed but not ratified the Covenant, and others that had not even signed it. Several States had entered limiting declarations and reservations to certain provisions of the Covenant, including non-derogable provisions, such as those concerning the right to life and to freedom from torture and other ill-treatment. The nature and scope of such reservations gave cause for strong concern, and his organization urged States parties to formulate objections to such reservations.

61. Amnesty International (AI) noted with disappointment that the majority of States parties' reports were not submitted within the time limits specified by the Committee. While it welcomed steps taken by the Committee to consider States parties in the absence of a report, it noted that the process could benefit from greater transparency and publicity. The Committee's practice of considering non-reporting States at private meetings and not making concluding observations public as soon as they had been divulged to the State party concerned limited the participation and advocacy efforts of NGOs in monitoring States parties' implementation of the recommendations they contained.

62. With regard to the reporting process in general, AI often observed a stark contrast between Governments' human rights rhetoric and the extent of their implementation of the Covenant's articles. It had also noted a lack of follow-up mechanisms and accountability at the national level. The formation of a domestic constituency, including national human rights institutions, NGOs, professional groups, academics and parliamentarians, that would provide follow-up and hold the Government to account was essential for complying with the Committee's jurisprudence and ensuring the impact of its concluding observations at the national level.

63. While AI welcomed the improvements made by the Committee in recent years to its procedure for follow-up of concluding observations, there was a need for a more substantive, in-depth and qualitative assessment of actions taken by States parties at the national level. Such an assessment could be facilitated by country visits by the Committee to review implementation, the organization of follow-up seminars on a regional basis or the holding of the Committee's March session in a designated region, where it could consider the reports of States parties in that region and also undertake follow-up activities. The additional resources needed by the Committee, the secretariat, NGOs and States parties in order to provide such follow-up represented a good investment because they helped increase accountability and implementation of the Covenant at the national level. The Committee had been a pioneer in advancing human rights law and new working methods among the United Nations human rights treaty bodies, and his organization looked forward to continuing to work with the Committee in those areas.

64. **Mr. Payot** (International Federation for Human Rights) said that the follow-up of the Committee's concluding observations should include the participation of civil society, at all levels. The Committee might wish to consider having the Special Rapporteur for follow-up on concluding observations organize briefings by NGOs once or twice a year concerning States parties' progress in giving effect to the Covenant. The Committee might also wish to consider formulating more explicit recommendations so as to make it easier for States parties and NGOs to determine the extent to which they were being implemented.

65. In the context of the Observatory for the Protection of Human Rights Defenders — a joint programme run by the Federation and the World Organization against Torture — he wished to draw the Committee's attention to the problem of attacks against human rights defenders who cooperated with the Committee and, in general, were present in many States parties to the Covenant. Given the increasing number of rights violations in many parts of the world, there was an urgent need for the treaty bodies to strengthen their contribution to the protection of those people. He urged the Committee to examine systematically, during

the consideration of each State party's periodic report, the situation of human rights defenders in that State. The member organizations of FIDH also called on the Committee not to hesitate to invoke rule 92 of its rules of procedure in order to prevent irreparable harm to human rights defenders who were victims of violations. FIDH proposed that the Committee should publish a general comment on freedom of association as a way of reminding States parties of their international obligations with regard to human rights defenders.

66. **Ms. Costa** (Human Rights Watch) said that four areas were critical to the continued strengthening of the Committee's work and to States parties' compliance with the Covenant. Firstly, Governments should continue to appoint to the Committee persons of the highest calibre in terms of knowledge and expertise. Secondly, in its interpretation of the Covenant, the Committee should stress firmness and clarity. It should be allocated the resources needed to meet its mandate: to consider States parties' reports and individual communications in a timely manner, to formulate general comments and to ensure the implementation of its recommendations. Thirdly, the Committee should give greater priority to increasing public awareness of its role, general comments and findings concerning individual States parties. To that end, all documents issued by the Committee should be written in an accessible style, and steps should be taken to continue developing the user-friendliness of the Committee's website. Fourthly, greater emphasis should be placed on the implementation of the Committee's findings regarding States parties – in both concluding observations and Views on individual communications. Each United Nations country team should give priority to ensuring the implementation of the treaty bodies' findings. Her organization looked forward to participating actively in those endeavours.

67. **Mr. Brett** (Conscience and Peace Tax International) said that his organization was a single-issue NGO active in the area of conscientious objection to military service. The Committee had been assertive in that area, drawing on the interaction between the three aspects of its work: the examination of States parties' reports, the quasi-judicial consideration of individual communications and the drafting of general comments.

68. The Committee's general comment No. 22 on article 18 (Right to freedom of thought, conscience and religion) was crucial to the issue espoused by his organization. It stated that a right to conscientious objection could be derived from article 18 of the Covenant. In making that statement, the Committee had drawn on earlier considerations of States parties' reports. It had dealt with communications submitted by conscientious objectors who had been sentenced to imprisonment for refusing to perform military service in a State party that made no provision for conscientious objection. In those cases, the Committee had found that they were victims of a violation of article 18 and had subsequently confirmed its jurisprudence in similar cases.

69. **Mr. De Zayas** (International Society for Human Rights) welcomed Mr. Ndiaye's statement about the advisory services and technical assistance that OHCHR could offer States parties. Since there was often an implementation gap and the Committee's recommendations were not always enforced, States parties should adopt enabling legislation so as to incorporate the Committee's decisions in their domestic legal order. He suggested that the secretariat could draft model enabling legislation and make it available to States parties.

70. His organization welcomed Mr. Riedel's emphasis on the right to life and celebrated with Mr. Badinter the progress achieved worldwide on the abolition of capital punishment. It applauded Mr. Bedjaoui for focusing on human dignity as the source of all human rights and shared his optimism for the future. Noting that Mr. Ramcharan had participated in the Berkeley University Conference to launch the 2048 Project, where there had been discussion of a statute for an international court of human rights with competence to issue binding decisions, he asked how long it might take to establish such a court.

71. **Mr. Cançado Trinidade** (Judge of the International Court of Justice), responding to questions posed by Mr. Salvioli, said he agreed that there was a need for jurisprudential cross-fertilization. He cited the example of the International Criminal Court, which, when discussing the question of reparation in collective cases, had analysed the case law developed between 1998 and 2005 by the Inter-American Court of Human Rights in that area. That was an example of the importance of dialogue not only between tribunals but also between jurisdictional and non-jurisdictional organs for the international protection of human rights.

72. He agreed that it was necessary for systems of protection of human rights to be victim-oriented. Of all the protection mechanisms, the only one that was initiated by individuals themselves was the individual complaints system, which was the strongest pillar of human rights protection. Since it was initiated by victims, they had the prerogative of choosing the procedure they thought would best protect their rights. Unlike some of his predecessors, he did not think there was any danger in the proliferation of human rights bodies; rather, it was reassuring that there were an increasing number of bodies devoted to the protection of human rights, whether judicial, quasi-judicial or administrative in nature. The criterion to be followed was the best interests of victims. In his view, such a proliferation of human rights organs presented no danger of fragmentation of international law. Instead, it asserted the ability of international law to resolve more effectively disputes at the intra-State level. Along those lines, it was important to foster dialogue so that all the organs could work in a coordinated fashion, bearing in mind that the ultimate subject of rights that emanated from international law was the human person.

73. **The Chairperson** said that she had been assured by speakers that they would respond in writing to the Committee concerning any unanswered questions that had been addressed to them.

74. *Mr. Iwasawa (Chairperson) took the Chair.*

75. **The Chairperson** thanked all the participants in the celebration of the 100th session, in particular the guest speakers, for their contributions. The Committee would reflect on all the comments made and would continue to strive towards a world in which human rights were fully protected.

76. As the current meeting would be his last as Chairperson of the Committee, he wished to take stock of the main achievements of the past two years. They had included: the completion of a first reading of general comment No. 34 on article 19 on the freedom of expression; the adoption of a new procedure involving the drafting of a list of issues prior to reporting; the adoption of revised reporting guidelines; a contribution to the work of the International Law Commission on the topic of reservations to treaties; and the organization of the current celebration of the Committee's 100th session.

77. **Mr. Bouzid**, **Mr. Amor** and **Mr. Salvioli** paid tributes to Mr. Iwasawa for his excellent chairmanship of the Committee.

78. **The Chairperson** thanked the members of the Committee and all the secretariat staff for their support and confidence.

79. He declared the 100th session of the Committee closed.

The meeting rose at 6.05 p.m.