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Seventy-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2038th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 25 July 2002, at 10 a.m.

Chairperson: Mr. BHAGWATI

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.2038/Add.1.

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The meeting was called to order at 10.05 a.m.

ANNUAL REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL (continued) (CCPR/C/75/CRP.6/Add.1-6, Add.6/Rev.1 and Add.7; CCPR/C/75/CRP.7/Add.1-8)

1. The CHAIRPERSON invited the Committee to resume consideration of its annual report to the General Assembly.

Chapter V (Consideration of communications under the Optional Protocol) (continued) (CCPR/C/75/CPR.6/Add.6/Rev.1)

Paragraph 24

2. Paragraph 24 was adopted.

Paragraph 25

3. Mr. SCHEININ observed that the paragraph should contain a reference to the individual opinions which Sir Nigel Rodley and he had expressed.

4. Paragraph 25 was adopted on that understanding.

Paragraphs 26-29

5. Paragraphs 26-29 were adopted.

Paragraph 30

6. Mr. KLEIN (Rapporteur) said that the Committee's observations in case No. 932/200 (Gillot v. France) would be inserted.

7. Paragraph 30 was adopted on that understanding.

Paragraphs 31 and 32

8. Paragraphs 31 and 32 were adopted.

Paragraph 33

9. Mr. KLEIN (Rapporteur) said that decisions taken at the current session would have to be included.

10. Paragraph 33 was adopted on that understanding.

Paragraph 34

11. Paragraph 34 was adopted.

Paragraph 35

12. Mr. SCHEININ pointed out that the Committee's findings in the Ashby case had been on the merits and not on admissibility. A reference to them might be useful, but it should be placed at the end of the paragraph and should read "However, in some cases, the Committee has considered this issue as pertaining to the merits of the case, as in case No. 580/1994 (Ashby v. Trinidad and Tobago)".

13. Paragraph 35, as amended, was adopted.

Paragraphs 36 and 37

14. Paragraphs 36 and 37 were adopted.

Paragraph 38

15. Paragraph 38 was adopted, after a minor editorial amendment.

Paragraph 39

16. Mr. KLEIN (Rapporteur) said that Mr. Scheinin had requested the incorporation of an explanation before the third sentence. The new sentence read: "While the majority of the members of the Committee came to the conclusion that the communication was inadmissible, these members did not agree on any specific ground for inadmissibility. Hence the Committee's decision spells out the reason for inadmissibility that was supported by a majority amongst those members who found that the case was inadmissible." The sentence was perhaps not easy to understand, but it reflected what had happened.

17. Mr. SHEARER endorsed the proposal, but suggested the phrase "did not agree on the same ground" instead of "did not agree on any specific ground".

18. The CHAIRPERSON suggested "did not agree on the common ground".

19. Paragraph 39, as amended, was adopted.

Paragraph 40

20. Mr. KLEIN (Rapporteur) proposed the deletion of "dissenting in whole or in part".

21. Paragraph 40, as amended, was adopted.

Paragraphs 41 and 42

22. Paragraphs 41 and 42 were adopted.

Paragraph 43

23. Mr. ANDO said that the two cases should be named.

24. Paragraph 43 was adopted, on that understanding.

Paragraph 44

25. Paragraph 44 was adopted.

Paragraph 45

26. Mr.KLEIN (Rapporteur) proposed that the paragraph should be deleted as no cases involving abuse of the right of submission had been considered during the period under review.

27. It was so decided.

Paragraphs 46-49

28. Paragraphs 46-49 were adopted.

Paragraph 50

29. Mr. KLEIN (Rapporteur) observed that the paragraph would contain the Committee's substantive comment on the importance of article 1 for the purpose of interpreting the law in question in that communication.

30. Paragraph 50 was adopted on that understanding.

Paragraphs 52-54

31. Paragraphs 52-54 were adopted.

Paragraph 55

32. Mr. YALDEN proposed that the reference to dissent should be deleted.

33. Paragraph 55, as amended, was adopted.

Paragraphs 56 and 57

34. Paragraphs 56 and 57 were adopted.

Paragraph 58

35. Mr. KLEIN (Rapporteur) explained that the English translation of the text was not yet available. Paragraph 7.3 of that translation would be incorporated in that paragraph.

36. Paragraph 58 was adopted on that understanding.

Paragraph 59

37. Paragraph 59 was adopted.

Paragraph 60

38. Paragraph 60 was adopted with a minor editorial amendment.

Paragraphs 61-63

39. Paragraphs 61-63 were adopted.

Paragraph 64

40. Mr. KLEIN (Rapporteur) said that the paragraph would be completed once the translation had been prepared. In addition, at least one other case relating to the liberty and security of persons had been decided during the session and would be mentioned in the paragraph.

41. Paragraph 64 was adopted on that understanding.

Paragraphs 65-74

42. Paragraphs 65-74 were adopted.

Paragraph 75

43. Mr. KLEIN (Rapporteur) proposed that the paragraph should be deleted as no case relating to expulsion had been considered by the Committee during the period under review.

44. It was so decided.

Paragraphs 76 and 77

45. Paragraphs 76 and 77 were adopted.

Paragraph 78

46. Paragraph 78, as amended to delete the reference to dissent, was adopted.

Paragraph 79

47. Mr. SCHEININ proposed that “opposed” should be replaced by “denied”.

48. Paragraph 79, as amended, was adopted.

Paragraph 80

49. Paragraph 80 was adopted.

Paragraph 81

50. Paragraph 81, as amended to delete the reference to dissent, was adopted.

Paragraphs 82-89

51. Paragraphs 82-89 were adopted.

Paragraph 90

52. Mr. KLEIN (Rapporteur) announced that the paragraph would include a reference to case No. 848/1999 (Orejuela v. Colombia).

53. Paragraph 90 was adopted on that understanding.

Paragraphs 91-94

54. Paragraphs 91-94 were adopted.

Paragraph 95

55. Mr. KLEIN (Rapporteur) proposed the deletion of the paragraph, since the Committee had not dealt with any cases under article 14, paragraph 5, of the Covenant during the period under review.

56. It was so decided.

57. Mr. KLEIN (Rapporteur) said that section (o) relating to the right to family and protection of children (Covenant, arts. 17, 23 and 24) should be retained because the Committee had examined case No. 902/1999 (Joslin v. New Zealand) relating to marriage during the current session.

58. It was so decided.

Paragraph 96

59. Paragraph 96 was adopted.

Paragraph 97

60. Paragraph 97 was adopted after minor editorial changes.

Paragraphs 98 and 99

61. Paragraphs 98 and 99 were adopted.

Paragraph 100

62. Mr. KLEIN (Rapporteur) observed that reference would also be made to some other cases.

63. Paragraph 100 was adopted on that understanding.

Paragraph 101

64. Mr. KLEIN (Rapporteur) said that case No. 854/1999 (Wackenheim v. France) would be mentioned in that paragraph.

65. Paragraph 101 was adopted on that understanding.

Paragraphs 102 and 103

66. Paragraphs 102 and 103 were adopted.

Paragraph 104

67. Mr. KLEIN (Rapporteur) noted that the reference to dissent would be deleted.

68. Paragraph 104, as amended, was adopted.

Paragraphs 105-107

69. Paragraphs 105-107 were adopted.

Paragraph 108

70. Paragraph 108, as amended to delete the reference to dissent, was adopted.

Paragraphs 109 and 110

71. Paragraphs 109 and 110 were adopted.

Paragraph 111

72. Paragraph 111, as amended to delete the reference to dissent, was adopted.

Paragraph 112

73. Paragraph 112 was adopted.

Paragraph 113

74. Mr. AMOR drew attention to the fact that case No. 854/1999 (Wackenheim v. France) should be incorporated in that paragraph.

75. Mr. SCHEININ considered that a cross reference to paragraph 118 would be useful because the remedy included a request to reconsider the article 27 issue.

76. Mr. KLEIN (Rapporteur) replied that cross-referencing was not usual practice.

77. Paragraph 113 was adopted subject to the inclusion of a reference to the Wackenheim case.

Paragraph 114

78. Mr. SCHEININ said that, in his opinion, the State party was under an obligation to provide for a remedy and so it would be more correct to say "When pronouncing on a remedy …".

79. Paragraph 114, as amended, was adopted.

Paragraph 115

80. Mr. SCHEININ pointed out that the individual opinion mentioned was his and that it referred only to the Brok case. The sentence should therefore read "An individual opinion was appended to the Committee's Views in the Brok case."

81. Paragraph 115, as amended, was adopted.

Paragraphs 116-119

82. Paragraphs 116-119 were adopted.

Paragraph 120

83. Paragraph 120 was adopted after minor editorial changes.

Paragraph 121

84. Paragraph 121 was adopted.

Paragraph 122

85. Mr. LALLAH observed that case No. 641/1995 (Gedumbe v. Democratic Republic of Congo) should be mentioned.

86. Paragraph 122 was adopted on that understanding.

Paragraphs 123 and 124

87. Paragraphs 123 and 124 were adopted.

88. Chapter V as a whole (CCPR/C/75/CRP.6/Add.6/Rev.1) was adopted.

Annex 1 (CCPR/C/75/CRP.7/Add.1)

89. Mr. KLEIN (Rapporteur) said he had made changes in respect of only one country, as compared with the previous year's report. He intended, however, to make some suggestions which he felt might improve matters in certain cases.

90. The status of Afghanistan and Germany was relatively clear: for the former, the Covenant had entered into force on 24 April 1983, three months after ratification on 24 January 1983, in accordance with the three-month rule stipulated in article 49, paragraph 2, of the Covenant; entry into force for the latter had taken place on 23 March 1976, following ratification on 17 December 1973, under the requirement for ratification by 35 States contained in article 49, paragraph 1.

91. Next came a group of States whose succession to States already bound by the Covenant had established a break with the past. There were two categories: the first, referred to by footnote (c), comprised Bosnia and Herzegovina, Croatia, Slovenia, Slovakia and the Czech Republic. They had all made only a declaration of succession, and were bound by the Covenant from the date of their independence, even though the declaration of succession might have been made later. The second category comprised successor States of the former Soviet Union, namely Armenia, Azerbaijan, Kyrgyzstan, Turkmenistan, Uzbekistan, Georgia and Moldova. All had made an express declaration of accession, handing an appropriate instrument to the Secretary-General of the United Nations as depositary, but had not made a declaration of succession. They were covered by footnote (b), which stated the Committee's position that such States should be regarded as bound by the Covenant from the date of independence, even though no declaration of succession had been made and regardless of the date of accession.

92. Unlike the other successor States of the former Soviet Union, Kazakhstan had deposited neither an instrument of ratification or accession, nor an instrument of succession. Having consigned Kazakhstan to a footnote simply stating those facts, the Committee had decided to include it in the list of States parties to the Covenant a few years previously, and had introduced a new footnote (d) explaining that Kazakhstan had the status of a successor State which was bound by the Covenant from the date of its independence.

93. The entry for Tajikistan, showing the date of ratification as 4 January 1999 and the date of entry into force as 4 April 1999, appeared to describe a simple case of application of the three-month rule under article 49, paragraph 2, of the Covenant. However, the date of entry into force was probably a mistake, perhaps relating to a stipulation made in the instrument of accession, he had been unable to clear up that point. If its existing date of entry into force were to remain in the list, he suggested that Tajikistan should be placed in the category of countries covered by footnote (b), i.e. those for which, according to the Committee's practice, entry into force dated back to independence.

94. Under general public international law, Estonia, Latvia and Lithuania were regarded as successor States of the former Soviet Union. However, their status was somewhat special in that the independence they had gained after the First World War had been lost following their occupation and annexation by the Soviet Union. Subsequently, many States had continued to argue that the occupation had been illegal and that the three Baltic States had never ceased to exist as legal persons. Accordingly they had been treated somewhat differently by the Committee, and their dates of ratification and entry into force related to the three-month rule under article 49, paragraph 2. The Committee might well decide to depart from its previous practice and append a footnote describing their situation; he did not think that would be appropriate at present.

95. The dates of ratification and entry into force for the Russian Federation were those of the former Soviet Union. There was much dispute in public international law as to whether the Russian Federation was an identical or successor State, and his own examination of the documents relating to the "foundation" of the Russian Federation had revealed a consensus among CIS members that the Russian Federation was a new, i.e. successor, State. The Russian Federation itself had never disputed its continuing responsibilities under the treaties entered into by the former Soviet Union. Also, it had not been admitted to the United Nations as a new State. He therefore considered that no further changes needed to be made to the information on the list concerning it.

96. The situation of Yugoslavia required further clarification in view of recent developments. In previous reports its date of accession had been recorded as 2 June 1971 and the Covenant's date of entry into force as March 1976, in accordance with article 49, paragraph 1. A separate footnote had referred to the reasons for its admission. However, after much conflict within the Yugoslav Government, reflected in the confusion about its identity within the United Nations, the Government of the new Yugoslavia had made declarations to the effect that it considered itself the successor to the former Yugoslavia. In 2000, it had been admitted to the United Nations after completing the same process as the other States which had broken away from the former Yugoslavia. With respect to the Covenant, the Government of the new Yugoslavia had declared that it would accede with effect from 23 March 2001. However, unlike those other successor States, it had made no declaration of succession. The problem confronting the Committee was to formulate an entry which took account of its practice of stating that there was no break in the protection afforded to the citizens living in the territory of Yugoslavia. However, it would also need to address the fact that, unlike the other successor States of the former Yugoslavia, a date of independence did not apply in the case of the new Yugoslavia.

Footnote (b) was therefore ruled out. He proposed the following solution: in the existing entry for Yugoslavia (Federal Republic of), the existing date of ratification (12 March 2001) should be retained and footnote (a) signifying accession should be appended. Then the existing date of entry into force (12 March 2001) should be removed and replaced by footnote (g). Footnote (g) would read:

> "The former State of Yugoslavia ratified the Covenant on 2 June 1971, and it subsequently entered into force for that State on 23 March 1976. The successor State of Yugoslavia (Federal Republic of) was admitted to the United Nations by General Assembly resolution 55/12 of 1 November 2000. According to a subsequent declaration, the Federal Republic of Yugoslavia acceded to the Covenant with effect from 12 March 2001. The Committee is of the opinion that the people within the territory of a State which constituted part of a former State party to the Covenant continue to be entitled to the guarantees enunciated in the Covenant."

97. Mr. LALLAH suggested replacing "The Committee is of the opinion that" with "It is the established practice of the Committee that".

98. Mr. SCHEININ thanked Mr. Klein for his comprehensive presentation, and welcomed his solution for Yugoslavia, which fully reflected the Committee's position that there must be no gap in responsibility for breaches of the Covenant. With regard to Tajikistan, he proposed correcting the mistake by replacing the erroneous date of entry into force by a footnote (b), as was normally done with other States in comparable situations. With regard to the Baltic States, he considered that leaving the situation as it was would not contradict the general principle of continuing responsibility, since the Russian Federation could still be held accountable for human rights violations committed in the Baltic States before their independence, given that the Soviet Union, as a party to the Covenant, had had effective jurisdiction.

99. Mr. Klein had highlighted a serious problem relating to the Czech Republic and Slovakia. Whereas, with the Soviet Union and the former Republic of Yugoslavia, one State could be held responsible, in their case the Committee would take the view that responsibility dated back to 1 January 1993. That issue would be best left in abeyance, since part of the Committee's jurisprudence was based on the position that laws dating back to 1991 under the Czech and Slovak Federation came within the Committee's jurisdiction because the latter had been a party to the Covenant.

100. Mr. SHEARER observed that the reference to the "Former State of Yugoslavia" in the new footnote (g) should be replaced by the "Former Socialist Federal Republic of Yugoslavia", the name under which that country had ratified the Covenant. With regard to the Committee's practice concerning the continuing protection of rights after succession, he felt that, for the sake of consistency, it might be advisable to review the literature relating to the Committee's jurisprudence and to consult the Office of Legal Affairs and the Treaty Directorate in New York.

101. Mr. ANDO replied that, as a treaty body, the Committee was not obliged to harmonize its opinions with the United Nations on such matters. Concerning Mr. Scheinin's comments on the problem raised by the 1991 domestic legislation on compensation in relation to the Optional Protocol, he had understood that both Slovakia and the Czech Republic considered it still to be

applicable. Therefore, provided they continued to accept the fact in future communications, matters could be left as they were. Finally, he pointed out that there were also problems with Eritrea, which had acceded to the Covenant on gaining independence from Ethiopia, which had itself acceded earlier.

102. Mr. KRETZMER said he was concerned about the phrase "continue to be entitled" in Mr. Klein's proposed footnote (g). At some time in the future, the question would arise, perhaps in a dialogue with its delegation, whether the new Yugoslavia was still liable for violations that had taken place before it had become a new State and acceded to the Covenant. The wording of the footnote should not be found wanting in such an eventuality.

103. Mr. KLEIN (Rapporteur) said he appreciated that point, but felt it would be inadvisable for the report to stray beyond what was known about the situation in Yugoslavia, or to depart from the Committee's practice of adhering closely to the Covenant. The Committee could not say that the new State of Yugoslavia was responsible for what had happened on the territory of Croatia before its independence, any more than that the new Croatia was responsible for what had happened on its territory before independence.

104. Mr. LALLAH said that the Committee could only adopt the report in the light of its practice to date. The issue was a substantive one which the Committee should deal with as and when it arose. The Committee had tried to look closely at what had happened in the past for the purposes of the report, but that should not prejudice its discussions in future cases.

105. Mr. KRETZMER replied that he was not seeking any binding language, but a formula that would indeed leave the matter open for substantive discussion. He proposed inserting the phrase "continuity in enjoyment of rights by persons in such States".

106. Mr. KLEIN (Rapporteur) said he preferred to retain his wording, since he could see no difference between Mr. Kretzmer's and his. He agreed with Mr. Scheinin's proposal on Tajikistan, and with the suggestions of Mr. Ando and Mr. Scheinin not to change the entries relating to the three Baltic States. In the light of Mr. Ando's comments, he was also minded not to make any changes in relation to the Czech Republic and Slovakia.

107. Mr. SHEARER asked whether the final sentence of Mr. Klein's footnote rested on the proposition that the provisions of the Covenant were largely customary international law. He could foresee that, faced with a delegation from the Federal Republic of Yugoslavia, the Committee might argue that the country's reporting obligations dated from the time when the Covenant had become binding on it again. It might nevertheless also be argued that, because the inhabitants of its territory were entitled to the protection of Covenant rights, the State bore some responsibility to guarantee them.

108. Mr. KLEIN (Rapporteur) answered that, to the best of his knowledge, the Committee had never argued that the Covenant had assumed the status of customary international law, although it had gone as far as asserting the special nature of the human rights treaties. He would endorse

the view that the Covenant came close to such status in its effect, but not in its nature. There were dissenting views to be found in the literature, and little in the way of support for the Committee's position. However, it was the Committee's view which should be reflected in its report.

109. The CHAIRPERSON thanked Mr. Klein for his explanation and analysis. He agreed that it would be better for the Committee to keep to the view it had already taken. When an appropriate case came before it, it might have occasion to change that view after a substantive discussion. In conclusion, he considered that the draft report was an excellent document. Mr. Klein, along with members of the secretariat who had assisted him, were to be congratulated on the great effort they had put into its preparation.

The public part of the meeting rose at 11.35 a.m.