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HUMAN RIGHTS COMMITTEE

Ninetieth session

SUMMARY RECORD OF THE 2470th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 19 July 2007, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

1. The CHAIRPERSON invited Mr. Amor, who represented the Committee in the working group on the harmonization of working methods of treaty bodies, to report on the results of the latest meeting of that body (HRI/MC/2007/2/Add.1).

2. Mr. AMOR said that the working group had held its second meeting in April. The main question under consideration had been whether a mechanism should be created that was specially mandated to harmonize the working methods of the treaty bodies. Support had been expressed for two proposals. One of them, put forward by the Committee on the Elimination of Discrimination against Women, had been to retain the inter-committee meeting and the meeting of chairpersons of the human rights treaty bodies (ICM/MC) set up pursuant to the international human rights instruments and to establish a harmonization mechanism made up of one representative of each of the treaty bodies which would meet several times annually for a trial period of two years. The other proposal, by the Human Rights Committee itself, had been to replace the inter-committee meeting and the meeting of chairpersons by a single harmonization mechanism composed of the chairperson and one or two members of each treaty body. As there had been differing views, the two proposals had been referred to the inter-committee meeting.

3. The CHAIRPERSON thanked Mr. Amor and asked Sir Nigel Rodley to report on the work of the working group on reservations of the meeting of chairpersons.

4. Sir Nigel RODLEY recalled that he had introduced the report of the second meeting of the working group (HRI/MC/2007/5 and Add.1) at the previous meeting. The working group had elaborated recommendations at the eighteenth meeting of chairpersons (HRI/MC/2006/5/Rev.1). Since then, it had met with the International Law Commission. The debate had focused on an assessment of the validity of reservations and the consequences of their non-validity. The Special Rapporteur of the Commission, Mr. Pellet, had said that the contribution of the treaty bodies on that question had been particularly useful, and he had also been very pleased that no member of the Commission had contested the competence of the treaty bodies for assessing the validity of reservations. On the whole, he had endorsed the recommendations of the treaty bodies, but he still had to convince all the members of the Commission.

5. He recalled that the Special Rapporteur had long been working on the elaboration of guidelines on practice in the area of reservations and that some of the guidelines had already been referred to a drafting committee. Two particular problems should be noted in connection

with the work of the Committee. Firstly, it was not certain that the drafting committee would approve the guideline which would consider reservations that were incompatible with the rules of jus cogens to be non-valid. Secondly, the Special Rapporteur had proposed that the fact that a treaty provision reflected a customary norm should not in itself prevent the formulation of a reservation to that provision. That position ran counter to the one taken by the Committee in its General Comment No. 24. It had emerged from the report which it had published shortly thereafter, however, that the drafting committee had taken account of those concerns. With regard to reservations contrary to a rule of jus cogens, the draft guideline was now worded to read: “A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.” (A/CN.4/L.705 – draft guideline 3.1.9). As to reservations which concerned treaty provisions reflecting a customary norm, the guideline read: “The fact that a treaty provision reflects a customary norm is a pertinent factor in assessing the validity of a reservation although it does not in itself constitute an obstacle to the formulation of the reservation to that provision.” (draft guideline 3.1.8). Lastly, one of the draft guidelines specifically addressed reservations to human rights treaties: “To assess the compatibility of a reservation with the object and purpose of a general treaty for the protection of human rights, account shall be taken of the indivisibility, interdependence and interrelatedness of the rights set out in the treaty as well as the importance that the right or provision which is the subject of the reservation has within the general thrust of the treaty, and the gravity of the impact the reservation has upon it.” (draft guideline 3.1.12). It was encouraging to see that the International Law Commission took account of the contribution of the treaty bodies in its work. The main criteria for assessing the validity of reservations were now established and responded to the concerns of the treaty bodies as much as the Committee could have hoped. The Commission must continue to debate the role of the treaty bodies, but the Special Rapporteur had now recommended that their competence to assess the validity of reservations should be recognized. He even proposed specifying that such competence extended to all reservations, and was not restricted to those concerning human rights treaties, and that the conclusions which they formulated in the exercise of that competence had the same legal validity as those emanating from their general role of monitoring treaty implementation. It still had to be decided whether the working group should continue its work and its cooperation with the Commission. He had not made any recommendation in that regard.

6. The CHAIRPERSON thanked Sir Nigel Rodley for that information, which concerned a fundamental question for the Committee. He invited Mr. Sánchez-Cerro and Mr. Amor to introduce the conclusions of the sixth inter-committee meeting.

7. Mr. SÁNCHEZ-CERRO said that the participants at the sixth inter-committee meeting had agreed on a number of points, which had been approved at the nineteenth meeting of chairpersons (document without a symbol, in English only). The debate had focused on the coordination of the work of the treaty bodies. The Committee's proposal to merge the inter-committee meeting and the meeting of chairpersons had been approved: in the future, the inter-committee meeting would take place twice a year instead of once, with the ex officio participation of the chairperson and one or two members of each treaty body.

8. The participants at the sixth inter-committee meeting had also discussed cooperation between the treaty bodies and specialized agencies, funds and programmes, non-governmental organizations (NGOs) and national human rights commissions, and they had examined the question of activities of transnational companies and their potential impact on human rights. It had been agreed that a harmonization of criteria would be useful in that area as well.

9. Mr. AMOR said that the proposal to merge the inter-committee meeting and the meeting of chairpersons had given rise to a lively debate, but that it had eventually been adopted, because among other advantages, it would help prevent a proliferation of meetings. Questions had been raised about the legal aspects of such a merger, and solutions would have to be found if problems arose. The new arrangement would retain the name of "inter-committee meeting", but would be mandated to harmonize the working methods of the treaty bodies, notably with regard to their relations with the States parties, the consideration of individual communications and consultations on general comments. One very important point was that the representatives of each treaty body must report to it after each meeting.

10. The proposal by the Committee on the Elimination of Racial Discrimination, which recommended the creation of a single body to consider communications, had also given rise to a heated debate. The proposal had ultimately been rejected. The Human Rights Committee had appreciated the proposal, but considered it inappropriate. Accordingly, he took issue with the fourth point agreed at the sixth inter-committee meeting, at which the secretariat was asked to continue to encourage the consideration of all reform proposals. The Committee was very much in favour of harmonization, but matters that had already been debated and decided should not be reopened.

11. The CHAIRPERSON thanked Mr. Sánchez-Cerro and Mr. Amor and said that he would provide information on the work of the nineteenth meeting of chairpersons of the human rights treaty bodies, whose report was not yet available.

12. In general, the chairpersons confined themselves to endorsing the conclusions of the inter-committee meeting. With regard to point IV, he had stressed that the reservations expressed by Mr. Amor had not reflected a personal opinion but the position of the Committee. It had therefore been decided that that explanation would appear in the report of the meeting of the chairpersons, together with the comments by Mr. Amor, which would be placed in the report of the inter-committee meeting. The Committee was very open to reforms, but it was also very concerned not to lose time revisiting non-viable proposals.

13. The chairpersons had also focused on two other issues: the conclusions of the Human Rights Council, which they had considered together with the Council's former President, Mr. de Alba, and the organization of meetings with States parties, which had been the subject of a productive debate with the many representatives of countries, who had questioned the representatives of the treaty bodies at length on their work and had shown particular interest in the future universal periodic review mechanism planned by the Human Rights Council, which would have a definite impact on the drafting of periodic reports. The chairpersons had not addressed the proposal for the creation of a single treaty body or the proposal by the Committee on the Elimination of Racial Discrimination concerning the examination of communications.

14. Ms. CONNORS (Office of the United Nations High Commissioner for Human Rights) informed the members of the Committee that the reports on the work of the sixth inter-committee meeting and the nineteenth meeting of chairpersons would be made available to them shortly. As the length of the reports was limited, it had not been possible to provide a detailed account of the meeting with the States parties, but an additional information note would be circulated.

15. Mr. O'FLAHERTY wished to comment on some of the points of agreement which had emerged from the inter-committee meeting and had been endorsed by the meeting of chairpersons, and which were recapitulated in the informal document that had been circulated. He asked whether budgetary resources were available to hold two inter-committee meetings annually and during which period of the year the meetings would be held. He would also like to know whether consideration had been given to changes that might need to be made to the working methods of the inter-committee meeting so that it could play a role of catalyst in the reform system, given that it did not have decision-making power and that ultimately each treaty body was the master of its own decisions. On that point, the experience of the Coordinating

Committee of Special Procedures might be instructive. Moreover, now that the Human Rights Council was in place and the universal periodic review was beginning to take shape, it was essential to define the relationship between the treaty bodies and the Council. It would be useful to hear the opinions voiced on that subject at the inter-committee meeting.

16. The summary of views on reform expressed by the treaty bodies (point III of the informal document) was very useful, but it was unfortunate that no mention had been made of either the work of the Nottingham meeting or the articles which had recently appeared in the special edition of the Human Rights Law Review, although they were directly connected with the reform. Moreover, the application of the revised harmonized draft guidelines for reporting (point VI) would require the Committee to review its own guidelines. The Committee against Torture had decided that the list of issues should serve as a basis for reporting, something which the Human Rights Committee had envisaged for some time. Perhaps the time had finally come to put the idea into practice.

17. With regard to the relationship with the United Nations specialized agencies and funds and programmes (points VII and VIII), he sought clarification on the meeting that it was recommended to hold between the members of those bodies, the Office of the High Commissioner for Human Rights and the treaty bodies, as well as on the real role that the rapporteur or coordinator could have whose appointment was recommended by the inter-committee meeting, given that his own experience as rapporteur for the relationship of the Committee with United Nations bodies had not been very conclusive so far.

18. He recalled that at the end of the Berlin meeting, which had been devoted to cooperation with national human rights institutions, the Committee had taken a position in favour of strengthening cooperation with those bodies and with NGOs. He asked whether the inter-committee meeting had considered an approach enabling it to provide national human rights instruments and NGOs with the means of contributing more actively and more effectively to the work of the treaty bodies.

19. With regard to producing human rights statistics (point XVI), it would be useful to reflect on how to speed up the process, which was very slow. Perhaps the secretariat had ideas for the Committee on that subject and could also indicate whether it planned to convene a briefing before the next inter-committee meeting to report on progress made in that area.

20. Ms. WEDGWOOD said she was concerned about the direction which the relationship between the Human Rights Council and the treaty bodies might take. It was vital to ensure

respect for the authority of the treaty bodies in their respective areas, and yet the possibility was being raised of their decisions being re-examined by the Council in the context of the universal periodic reviews.

21. Ms. MOTOC said that, as she understood it, the Special Rapporteur on reservations of the International Law Commission recognized the competence of the treaty bodies for assessing the validity of reservations, and she asked whether Sir Nigel Rodley, in his capacity as Rapporteur of the working group on reservations, could confirm that that was the case. In its General Comment No. 24, on issues relating to reservations, the Committee accorded rights that had the character of peremptory norms a much broader scope than general international law did. She wondered whether that difference of interpretation had been addressed by the working group on reservations.

22. She doubted that the inter-committee meeting could really contribute to reform, even if it met twice a year instead of once. Apart from the fact that it provided the representatives of the various treaty bodies with the opportunity to meet for discussions, nothing concrete could be expected to come of it. The Coordinating Committee of Special Procedures had succeeded in defining a joint position concerning the relationship between it and the Human Rights Council, but the inter-committee meeting could hardly arrive at the same result because each treaty body was closely attached to its own identity. The appointment of rapporteurs in each treaty body might be useful, provided that they were given concrete guidelines and means. The use of the list of issues as a basis for reporting was a very valuable procedure which the Committee would do well to adopt.

23. The CHAIRPERSON, referring to the proposal to hold two inter-committee meetings annually instead of one, said that it had not been possible to be sure whether resources would be available to act on the proposal and that it was therefore premature to try to define such practical details as the agenda of the meetings or changes to working methods. As for the relationship of the Committee with the Human Rights Council and the special procedures, and the harmonization of working methods for reporting, the bureau would submit a suggestion to the members of the Committee for appointing three rapporteurs from within their midst; one would be mandated to propose a framework conducive to starting a mutually enriching collaboration with the Human Rights Council, another to consider ways of strengthening the Committee’s relationship with the special procedures and the third to make recommendations on harmonizing working methods for reporting. The Committee should decide on the proposal without delay so that it could submit new ideas at the next inter-committee meeting.

24. Sir Nigel RODLEY, replying to a question by Ms. Motoc on the scope of the rights covered by the concept of peremptory norms, said that that was not the subject of the discussion on reservations to treaties in the International Law Commission. The Commission had established the principle according to which "a reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law" (draft guideline 3.1.9), without examining in detail what was covered by peremptory norms. As to the competence of the Committee to assess the validity of reservations, in its preliminary conclusions of 1997 (A/52/10, para. 157), the Commission had recognized the competence of treaty bodies "to comment upon and express recommendations with regard to the admissibility of reservations by States", subordinating it to the control of States or bodies responsible for the settlement of disputes arising from the application of treaties. That restriction was lifted by the current draft guideline of the Special Rapporteur of the Commission, which provided that the treaty bodies, like the other contracting States and dispute settlement bodies that might be competent to interpret or apply the treaty, had "competence to assess the validity of reservations" and that "the findings made by such a body in the exercise of this competence shall have the same legal force as that deriving from the performance of its general monitoring role" (A/CN.4/558/Add.2, paras. 167 and 171). In other words, the tone had changed, although the content remained basically the same. However, it would be easier for the Committee to argue its position if the proposal was endorsed by the International Law Commission.

25. Ms. MOTOC said that she had merely wanted to know whether the difference between the way in which peremptory norms were defined in the Vienna Convention and the Committee's broader interpretation in General Comment No. 24 might not create conflicts of interpretation when assessing the validity of reservations.

26. Mr. IWASAWA said that he did not have the feeling that the restriction enunciated in the preliminary conclusions of 1997, in which the Commission asserted that "the legal force of the findings made by monitoring bodies in the exercise of their power to deal with reservations cannot exceed that resulting from the powers given to them for the performance of their general monitoring role" (A/52/10, para. 157), was lifted with the proposal of its Special Rapporteur.

27. Sir Nigel RODLEY replied that the ideas underlying the Special Rapporteur's proposal were not fundamentally different from the Commission's initial position, but they were expressed in much more moderate terms. Responding to Ms. Motoc, he stressed that the Committee's General Comment No. 24 and the work of the International Law Commission on

reservations to treaties should not be linked. It was interesting to note, however, that draft guideline 3.1.8 recognized that the fact that a treaty provision reflected a customary norm was a pertinent factor in assessing the validity of a reservation. With regard to non-derogable rights, the Commission's position was not totally congruent with the Committee's, because the Commission did not recognize that those rights had the character of a peremptory norm, but it nevertheless established that a reservation to a treaty provision relating to non-derogable rights could not be formulated unless the reservation in question was compatible with the essential rights and obligations arising out of that treaty (draft guideline 3.1.10). There was nothing there that the Committee had serious reasons to contest.

28. Mr. AMOR said that the new arrangement for the inter-committee meeting must be envisaged in a pragmatic manner and without pre-conditions, and the Committee should simply ask itself what that body could actually do and in which areas. Harmonization could be particularly useful in several domains. The Committee should draw on the experience of other committees and also make its own contribution, for example with regard to the communications procedures. As to provisional protection measures, much could be done in conformity with treaties. It would also be useful to encourage contacts between committees for elaborating general comments, if only for information purposes, an exchange of views and dialogue.

29. With regard to the reports, one approach might be that, after their initial reports, States would simply reply to questions sent by the committees; that would constitute the periodic reports. The Committee had favoured the idea for years and should try to implement it, especially now that the Committee against Torture had decided to apply it. The questions could be targeted as a function of each committee; that would allow an in-depth consideration of the reports and would lighten the task of States.

30. As to the Human Rights Council, the Committee had always argued that everything could be done in conformity with treaties. If the Committee could make a contribution without taking part in political operations of no concern to it, it should do so, in the interest of promoting human rights. As had been proposed by other members of the Committee, he thought that it would be useful to discuss the question and to try to arrive at a position in order not to be caught unprepared.

31. Mr. O'Flaherty had referred to the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies, held in Berlin by the German Human Rights Institute. The debates had been very fruitful and had, of course, focused on the idea of cooperation, exchanges of information and contacts between the various bodies. Twenty-seven

national institutions had attended the meeting, and although questions still had to be clarified with regard to participation and representation, notably whether it was necessary to work solely with institutions which complied with the Paris Principles or whether on the contrary it was important to avoid breaking off contact with the others, matters were moving in the right direction.

32. Mr. SÁNCHEZ-CERRO wanted to return to the question of the effect and validity of decisions taken by the inter-committee meeting. It was important to decide the scope of the decision-making power of the representatives of the committees, what their actual mandate was and what mechanisms made it possible to give effect to those decisions.

33. The representatives of the various committees had sharply diverging views with regard to the relationship with the Human Rights Council. The Council was a political body, and some committees feared that they would be "contaminated". Nevertheless, although the Council's methods and interests differed from the Committee's, both were mandated to protect human rights at international level, and nothing prevented the Committee from dialoguing with the Council, as it did with other political bodies, in particular in connection with reports on the situation of human rights in various countries. The Committee should decide whether it intended to maintain a relationship with the Human Rights Council and whether it planned to come to an agreement with other committees on institutionalizing that relationship.

34. The CHAIRPERSON said that until now, inter-committee meetings and meetings of chairpersons had functioned ad referendum and had not been mandated to take final decisions. That was one of their weaknesses, because after all, recommendations were formulated during the meetings on ways of harmonizing or improving working methods. As to the relationship between the treaty bodies and the Human Rights Council, a special rapporteur should be appointed to set out the Committee's position in a recommendation. The same applied with regard to the application of guidelines to harmonize reporting by States parties. The Committee should perhaps entrust one of its members with gathering ideas, which would be debated and would later constitute the Committee's proposals.

35. Ms. WEDGWOOD agreed that the Committee should reflect on its relationship with the Council in order to preserve the integrity of both and help the Council continue on the right path. If the universal periodic review planned by the Council was conducted in a small working group, in other words in closed session, the Committee's rapporteur for a particular country could be invited to an informal discussion with the working group in order to inform it of the concluding

observations which the Committee deemed important. It would also be useful to indicate clearly to the Council that the Committee's concluding observations were not open to revision. The Council would be free not to take the concluding observations into account or to decide not to apply them, but it would not be able to modify them.

36. Mr. O'FLAHERTY asked the secretariat whether it could reply to the questions asked.

37. Ms. CONNORS (Office of the United Nations High Commissioner for Human Rights) said that financing had been found for holding a second inter-committee meeting in 2008 with the ex officio participation of the chairpersons. The discussion that had just taken place had convinced her that that meeting should last three days, and not just one; that would allow it to address many of the questions raised by Mr. O'Flaherty and any others that members of the Committee might wish to submit. That way, the harmonization work could make good progress. Of course, some tasks would take less time than others. Thereafter, it was planned to hold a meeting every six months.

38. With regard to the report on the Nottingham meeting and the articles of the Human Rights Law Review, the secretariat had taken the necessary steps with the publishing house responsible for the copyright to obtain the authorization to include them in the meeting's reports. The secretariat also looked forward to comments on other proposals for treaty body reform, including the proposal by the High Commissioner for Human Rights to create a single treaty body. Some decisions would require a discussion with the Committee, notably those dealing with the relationship between the Committee and the Council and those relating to the universal periodic review.

The meeting was suspended at 5 p.m. and resumed at 5.10 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 8) (continued)

Draft general comment No. 32

39. Mr. KÄLIN (Rapporteur on draft general comment No. 32) suggested resuming consideration of paragraphs 37 to 41, and then returning to paragraphs 22 to 24, which had been amended, and, time permitting, to paragraph 5.

40. With regard to paragraph 37, he had received several proposals from Ms. Wedgwood, and he could endorse them all. Firstly, the second sentence would become: "Persons assisted by a lawyer have the right to instruct their lawyer on the conduct of their case, within the limits of professional responsibility, and to testify on their own behalf". Secondly, in the antepenultimate sentence, the words "further distress" would be replaced by "intimidations". Thirdly, in the last

sentence, the phrase “excluding any possibility whatsoever to defend oneself in any criminal proceedings” would be replaced by “any absolute bar against the right to defend oneself in criminal proceedings”. He also agreed with Ms. Wedgwood’s proposal to delete the fourth sentence in paragraph 38. In paragraph 39, the entire first sentence should be placed in the plural, and the first part of the last sentence should be placed in square brackets (“Within these limits, and subject to the overriding rule that evidence obtained in violation of article 7 may never be admitted”), the formulation of which depended on the wording adopted for paragraph 5. Paragraphs 40 and 41 remained unchanged. If it agreed to those changes, the Committee would adopt the text as a whole on second reading, apart from the paragraphs still pending.

41. Ms. WEDGWOOD said that in paragraph 41 of the English version, the words “means of methods” should read “means or methods”. Additionally, given that in many cases the purpose of a police interview was to put psychological pressure on the suspect in order to obtain a confession, the words “psychological pressure” seemed too broad; she suggested the insertion of a limiting adjective, such as “undue”.

42. Mr. KÄLIN (Rapporteur on draft general comment No. 32) endorsed that proposal.

43. Mr. AMOR said it was important to retain the word “distress” in paragraph 37, but the idea of intimidation should also be included, because both were likely to occur. In paragraph 38, the phrase “because they lack the required mental capacities” should be broadened to include all cases, and to that end he proposed inserting the words “competence or” after “required” (“because they lack the required competence or mental capacities”).

44. Ms. WEDGWOOD said that the text under consideration was a serious working document which judges would be able to invoke, and it was therefore necessary to be demanding. In paragraph 41, the phrase “or any other form of compulsion” went too far, because a court sometimes ordered persons to testify and to denounce their accomplices. If the goal was to reaffirm the right not to testify against oneself, it would be preferable to say so explicitly.

45. Sir Nigel RODLEY said that the Committee would have to return to that point once a definitive formulation had been agreed on for paragraph 5

46. Mr. KÄLIN (Rapporteur on draft general comment No. 32) also thought that the Committee should suspend consideration of paragraph 41. As for paragraph 37, he agreed with Mr. Amor that it was important to evoke the need to protect vulnerable witnesses from both further distress and intimidation. He urged the Committee to consider the new draft paragraph 22

(document without a symbol, in English only), which he had modified to take the discussions in the Committee into account.

47. Ms. WEDGWOOD said that, on the sidelines of the meetings, a number of members of the Committee, herself included, had expressed the view that it would be useful to insert a footnote in that paragraph referring to the provisions of the Fourth Geneva Convention which addressed the administration of justice in occupied territories.

48. Mr. O'FLAHERTY was of the view that General Comment No. 32 was not conducive to raising very complex questions of lex specialis in the context of armed conflicts and that the Committee was not competent to do so. As he saw it, paragraph 22, which dealt explicitly with exceptional situations, in other words which also covered situations which might occur during an armed conflict, was fully satisfactory without there being any need to add a reference to the Geneva Conventions.

49. Sir Nigel RODLEY noted that the first sentences of the paragraph concerned the trial of civilians in military or special courts, but that in the last sentence, the State party was asked to demonstrate that recourse to "military courts was unavoidable", whereas no further mention was made of special courts. It was important to ensure drafting consistency.

50. Mr. AMOR wondered whether the entire last sentence of the paragraph was warranted, because it seemed to go too far.

51. Sir Nigel RODLEY said that above all, it was important to decide whether the Committee wanted its general comment on article 14 of the Covenant to reflect its position on communication No. 1172/2003 (Madani v. Algeria); that position implied, although it was merely conjectural, that a special civilian court provided better guarantees of compliance with article 14 of the Covenant than a military court. Several members of the Committee had strongly disagreed with that viewpoint during consideration of the communication. Whereas in the case of communications, members of the Committee could annex an individual opinion to its decisions, for general comments the rule was that the Committee sought to reach a consensus, which alone was reflected in the final text. Members of the Committee who disagreed with the majority could expressly request that their opinion be placed in the summary record of the meeting. He did not wish to encourage that practice, but perhaps it would at least make it possible to avoid a deadlock.

52. The CHAIRPERSON noted that paragraph 22 referred to high-security courts; it did not seem necessary or even wise to retain those words.

53. With regard to the possibility of annexing dissenting opinions to the text of a general comment, nothing prohibited the Committee from introducing such a practice, which was very common in legal institutions and would have an enriching effect. In declining to record positions which departed from the majority opinion, the Committee might deprive itself of the possibility of a further discussion on important considerations that often reflected the diversity of the legal systems represented in its midst.

54. Mr. KHALIL said he still hoped that the Committee would reach a consensus on the wording of paragraph 22, but recalled that consensus was not synonymous with unanimity. He had formulated an individual opinion on communication No. 1172/2003 for reasons similar to those that had led him not to endorse the last sentence of paragraph 22, which could be interpreted as requiring the State party to demonstrate that recourse to a military court had been unavoidable even in the admittedly rare case in which the military court that had tried a civilian had done so in full compliance with the provisions of article 14 of the Covenant. In his view, it would be difficult for the Committee to reach a consensus on that point.

55. Mr. O'FLAHERTY said that the reference to high-security courts had been taken from the Committee's Views with regard to communication No. 1172/2003. He agreed with those members of the Committee who were in favour of modelling the formulation of paragraph 22 as closely as possible on the wording in the Views.

56. Ms. WEDGWOOD, returning to the question of whether dissenting opinions should be annexed to general comments, stressed that, in the context of the procedure established by the Optional Protocol, that possibility gave even greater weight to the Committee's jurisprudence, because the very fact of being able to annex an individual or dissenting opinion reaffirmed with even greater conviction the Committee's majority view. Clearly, the circumstance that that possibility existed for Views on communications but not for general comments created a difficulty which the Committee would need to address.

57. With regard to the disappearance of the reference to special courts in the last sentence of paragraph 22, one solution might be to draw a clearer distinction, throughout the paragraph, between military and special courts.

58. Paragraph 22 concerned a communication that addressed a situation associated with a domestic conflict of a State party. However, the proposed formulation for the paragraph was so general that it might be thought that its purpose was to rule out the application of international humanitarian law. However, the Committee had made two points very clear in paragraph 11 of

its General Comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant: firstly, the Covenant applied also in situations of armed conflict to which the rules of international humanitarian law were applicable and, secondly, while, in respect of certain Covenant rights, more specific rules of international humanitarian law might be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law were complementary, not mutually exclusive. In her view, to give human rights legislation its rightful place and reconcile the interpretation of jurists, it was important to bear in mind that military courts were required to abide by human rights legislation. That was why she insisted on the insertion of a footnote referring to the Fourth Geneva Convention, and more specifically to its article 64. The advantage of that would be to show that the Committee considered that, far from being in competition, human rights legislation and international humanitarian law were complementary.

59. Mr. SHEARER subscribed to Ms. Wedgwood's point of view, which could be summarized in a short sentence in the body of paragraph 22. It would also be useful to insert another footnote referring to paragraph 11 of General Comment No. 31.

60. Mr. KÄLIN (Rapporteur on draft general comment No. 32) said he would see to it that Sir Nigel Rodley's comment concerning the drafting consistency of the paragraph was taken into account. He agreed with the Chairperson that the reference to high-security courts would only be misleading and should be deleted. He also noted that a consensus was emerging on incorporating two footnotes referring to paragraph 11 of General Comment No. 31 and paragraph 64 of the Fourth Geneva Convention.

61. If the Committee could not arrive at a compromise between the different points of view on the content of paragraph 22, it might be possible to spell out the position of the majority in greater detail, in particular concerning the exceptional nature of the trial of civilians by military or special courts. The last sentence of the paragraph reflected what the majority of the Committee was prepared to regard as acceptable exceptions, but it should be expressed more clearly. In order to clarify why the Committee considered that the State party must demonstrate the appropriateness of its choice, the fifth sentence might be changed to read that the trial of civilians by military or special courts should take place under conditions which genuinely respected all the provisions of article 14. The need to maintain the exceptional nature of such trials could be mentioned at the beginning of the sixth sentence, which would read: "Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State

party can show that…". He hoped that that wording would meet with a consensus; if not, he would ask other members of the Committee to elaborate a new proposal for paragraph 22.

62. As to the treatment of minority views in the Committee, it would be difficult to annex dissenting opinions to the text of a general comment, since the compendium of general comments adopted by the treaty bodies (HRI/GEN/1/Rev.8) did not do so. As he saw it, the members of the Committee who did not endorse the majority position should explain their point of view orally, which would then be duly reflected in the summary record of the meeting.

The meeting rose at 6.05 p.m.
