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Sixty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1667th MEETING

Held at Headquarters, New York,
on Wednesday, 8 April 1998, at 10 a.m.

Chairperson: Ms. CHANET

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1667/Add.1.

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The meeting was called to order at 10.20 a.m.

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- (b) EFFECTIVE IMPLEMENTATION OF UNITED NATIONS INSTRUMENTS ON HUMAN RIGHTS AND EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO SUCH INSTRUMENTS (E/CN.4/1998/83 and 85)

1. Ms. EVATT drew the Committee's attention to General Assembly resolutions 52/116, 52/117 and 52/118, all of which concerned human rights, and to document E/CN.4/1998/85, which contained a summary of the recommendations of the independent expert, comments received and views of the Secretary-General thereon, and which had been prepared pursuant to decision 1997/105 of the Commission on Human Rights. Regrettably comments had been received from only eight countries and four non-governmental organizations. One State party had criticized the way in which treaty bodies dealt with individual communications.

2. She had specific proposals for action to be taken by the Committee. First, in its letter to the High Commissioner for Human Rights, the Committee should refer to the above-mentioned General Assembly resolutions so as to underscore the need for adequate resources. Second, it should ask the Working Group on Article 40 at the next session to make proposals regarding the fiftieth anniversary of the Universal Declaration of Human Rights. Third, it should consider what could be done to assist States parties regarding their overlapping obligations to the treaty bodies, and especially develop guidelines for which specific parts of reports to other treaty bodies should be included in States parties' reports to the Committee. Fourth, she supported the establishment of a joint working group of human rights committees to coordinate the guidelines in specific thematic areas. Lastly, the Committee should give serious consideration to what should be done about the follow-up to State reports.

3. Lord COLVILLE said that while working on the consolidation of the Committee's guidelines, he would look at a typical report to the Committee against Torture to see to what extent the material in one State's report under that Convention could be incorporated into that State's report to the Human Rights Committee, and include that as an appendix.

4. Mr. POCAR said that he had participated in an analytical study to determine why the six core United Nations human rights treaties had not been ratified by States and believed that the Committee should support Mr. Alston's recommendations for concrete action in that regard, especially the appointment of special advisers on ratification and reporting who could assist States parties. He believed the Convention on the Rights of the Child could be used to persuade the States parties to ratify other instruments since it was a compilation of all human rights but in relation to children. It was clear that States could not accord those rights to children and then deny them to those

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same children when they became adults. Besides, universal ratification would facilitate the coordination of the reporting system.

5. In reference to the point made by one State party criticizing how the Committee dealt with communications, he would like to know to which communications the State party had been referring.

6. Lastly, he believed that although it was not necessarily the responsibility of the Secretary-General to adopt a final decision on the matter, some reference should be made to the fact that the question of State succession should be reserved.

7. Mr. YALDEN said that he would welcome further information on the cooperation under way between the Committee and the Office of the High Commissioner for Human Rights related to the fiftieth anniversary of the Universal Declaration of Human Rights as well as on similar cooperation between the Office of the High Commissioner and United Nations organs and agencies.

8. Mr. BUERGENTHAL said that a working group within the Committee or a joint working group with other treaty bodies should be established to provide technical assistance to States when submitting their reports. He also strongly supported Ms. Evatt's suggestion to establish a joint working group with other treaty bodies to coordinate the activities of the Committee. Furthermore, he thought it was high time to seriously consider the establishment of a merged committee on State reports and on communications. The Committee should also consider following up on at least those State reports in which serious problems were found. Lastly, he did not think the Committee could contribute to the activities for the preparation of the fiftieth anniversary of the Universal Declaration of Human Rights as there was a lot already under way.

9. Mr. BHAGWATI recalled that the former Centre for Human Rights had at one point held two meetings with States that had not ratified the human rights instruments, one for the African region and one for the Asia-Pacific region, in order to determine why the two main Covenants at least had not been ratified. The reports of those meetings might be useful in identifying the obstacles to ratification, a question that could perhaps be investigated by a joint working group of the treaty bodies.

10. He would not be in favour of merging the treaty bodies into one, but believed it would be useful to study how States parties could consolidate the information they provided to the various committees regarding a given right covered by more than one instrument.

11. He strongly supported Mr. Buergenthal's idea of drawing upon the expertise of individual Committee members for technical assistance to State parties in the preparation of reports and in considering whether they might not withdraw their reservations. A similar system was already in place in the International Labour Organization (ILO).

12. On the question of follow-up to State party reports, the current system was to wait until the next report for information on how the Committee's recommendations had been implemented; but he would suggest that on particularly

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pressing matters, the States parties might be asked to make an interim report, with which the Special Rapporteur for Follow-up on Views would also deal, and that the Committee might in general set a time-frame for the implementation of its recommendations.

13. Mr. KLEIN said that all the treaty bodies must give more thought to the growing problem of overlapping areas, not only in order to devise a system by which States parties could submit the same information to more than one Committee, but also in order not to arrive at divergent interpretations or take divergent actions on the same human rights - something that should be avoided at all costs. Mr. Buergenthal's proposal in that regard had some disadvantages. Another possibility would be to have the individual committees specialize more, dividing the work on specific rights among them; of course, the disadvantage to that would be that some of the other treaty bodies were not composed exclusively of legal specialists, as was the Committee.

14. He supported Mr. Bhagwati's suggestion concerning interim reports on crucial recommendations, for it was not logical to criticize States parties severely and then wait, sometimes up to 10 years, to check again with them.

15. Concerning the preparations for the fiftieth anniversary, the press conferences by the Chairperson in July and October could be used to stress the importance of universal ratification, especially of the International Covenant on Civil and Political Rights. The anniversary could be used for the Committee's own purposes as well, as an occasion for urging the United Nations to give all possible support to the work of the Committee. The Committee must adjust to the new conditions and reorganize its own work. Perhaps it could no longer afford to sit always in plenary meetings, but should use part of the time to split up into parallel working groups, as had been done effectively at the current session. Such a new system could be the Committee's contribution to the anniversary.

16. Ms. MEDINA QUIROGA said that it was clear from the Secretary-General's latest report to the Commission on Human Rights regarding the functioning of the treaty bodies (E/CN.4/1998/85) that overlapping reporting obligations were a real problem for States parties, and the Committee must pay attention to that. She was not sure exactly what Mr. Buergenthal meant by a merged Committee; but perhaps, as an experiment and if the scheduling allowed, a joint committee of treaty bodies could try joint consideration of one State party report. It being a fact of life that more than one treaty body had a mandate over the same issue, the committees must coordinate among themselves on a regular, established basis, also in order to avoid the divergent decision-making that concerned Mr. Klein. In the case of general comments, for instance, it should be the policy to draft them in coordination with the other treaty bodies that dealt with the same right: in the case of article 7, for example, with the Committee against Torture or, in the case of article 3, with the Committee on the Elimination of Discrimination against Women.

17. Mr. Pocar's solid argument in favour of universal ratification should be elaborated: certainly it was strange that although the Convention on the Rights of the Child had received near-universal endorsement, the same did not apply to the Covenants, which covered the same rights but applied to adults. On the

problem of special reports, she felt that the criteria for requesting such reports needed to be clarified.

18. Mr. LALLAH recalled that the meetings of chairpersons had been set up in the late 1980s as the mechanism to deal with the already much-discussed difficulties that States parties, in both the developed and the developing world, were having in meeting their reporting obligations. It was soon discovered, however, that those obligations differed from one treaty body to another because of the way in which the rights were covered by each treaty; and each Committee had continued to insist on receiving a separate report. The annual meetings of chairpersons had done useful work for a decade, on procedural points: out of them had come the core document, applicable to all reports; and the understanding that States parties could not simply refer committees to reports submitted to other bodies. The meetings had, however, not resolved the substantive, normative issues, like the differing interplay of rights under each treaty.

19. It was understandable that there had been fewer ratifications of the International Covenant on Civil and Political Rights, for the rights it guaranteed imposed an obligation of immediate implementation; whereas the economic, social and cultural rights guaranteed under both the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child imposed an obligation on States parties simply to work towards an ideal.

20. He was not necessarily of the view that a given right must be given a common interpretation by all the treaty bodies. The other treaty bodies might legitimately have an entirely different perspective on a right. He, personally, would be distressed if an agreed interpretation set out in a joint general comment were to go against a principle raised in a communication to the Committee which in his conscience he knew to be valid. The Committee's own general comments were based on the Committee's jurisprudence as developed in its consideration both of State party reports and of communications, where the interpretation of rights was done in much greater depth. Perhaps, as Mr. Buergenthal had suggested, the eventual solution would be a merged committee - which, of course, would require universal ratification and a membership elected by all States parties. He recalled that Mr. Pocar had produced a paper in that sense for the preparatory committee of the World Conference on Human Rights, but it had not been discussed. There would indeed be tremendous difficulties in merging the work of the treaty bodies, and the solution would rest not only with the bodies themselves but with the States parties, which must stop blaming themselves for signing treaties they no longer wished to observe. The Committee must fulfil its duty at all times and not be diverted by pragmatic difficulties from keeping its sacred trust to uphold the Covenant, but it was of course useful to look at what was common among the treaty bodies, and Lord Colville's exercise would be important there.

21. Regarding technical assistance to the States parties, members of the Committee had in the past been sent to assist - Mr. Ndiaye to all the Francophone West African countries and he himself and Mr. Tomuschat to Iran - and the secretariat should give the Committee resources for that very valuable kind of assistance.

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22. Mr. ZAKHIA proposed that the Committee's contribution to the fiftieth anniversary should be to produce and publicize a report taking stock of the Committee's past work, making suggestions for its future work, and giving the Committee's appraisal of the evolution of actual practice in the observance of human rights.

23. Mr. SCHEININ observed that perhaps in the very long term, after many stages, there could be a merger of the treaty bodies. The best would be for the Committee to smooth the way for such a possibility by performing as an example of how best to improve one's own methods and results. At any rate, the discussion of a merger that might be one or two decades off should not divert attention from the current crisis in the functioning of the treaty bodies.

24. He endorsed the kind of follow-up procedures suggested by Mr. Klein, and believed that in the process the Committee should be open to valuable assistance and suggestions from outside sources such as non-governmental organizations, academic institutions and academic networks.

25. Mr. EL SHAFEI strongly endorsed Mr. Lallah's comments, and found his history of the meetings of chairpersons very instructive. The thrust of United Nations action on behalf of human rights should be strengthened in its current form and given more serious encouragement by the General Assembly as the representative of the United Nations as a whole. He agreed with Mr. Scheinin that the merger of treaty bodies was very far off; it raised so many problems, not least among them the fact that the unified report that would be considered by such a body could be made only by the minimum number of States parties that had ratified the various treaties.

26. The first order of business for the meeting of chairpersons should be to improve the rate of ratification. Some States parties were sponsoring initiatives for new treaties even as they themselves declined to ratify the existing ones. He agreed with Ms. Medina Quiroga that the Committee could usefully discuss the interpretation of a specific right with other treaty bodies in a common working group.

27. Mr. PRADO VALLEJO welcomed the work carried out by the former Centre for Human Rights and, now, the Office of the High Commissioner for Human Rights, in organizing seminars to disseminate information on human rights and assist State parties in preparing their reports. He himself had been invited to participate in such a seminar in December 1997 and had been extremely impressed by its content. He fully agreed that the Committee should continue to improve its methods of work. Referring to the General Assembly resolutions, he said that the time was not ripe for a consolidation of all the human rights treaty bodies, which had different working methods. Perhaps that could take place in the distant future; for the time being, other avenues of collaboration should be pursued, such as the meetings of persons chairing treaty bodies.

28. Efforts must be made to increase the dissemination of the Covenants at the national and international levels, in all sectors of society. Too many people were completely ignorant of their rights under the Covenant. He expressed concern about the implementation of General Assembly resolution 52/131 on the strengthening of United Nations action in the field of human rights, through,

inter alia, international cooperation, noting that a large number of countries had either abstained or voted against the resolution for political reasons.

29. Mr. ANDO agreed with Mr. Pocar that the Convention on the Rights of the Child, which many States had ratified, would be an appropriate point of departure for a campaign to universalize ratification of the two basic covenants. The studies referred to by Mr. Bhagwati must be reviewed in order to determine the causes for non-ratification of various human rights instruments.

30. He supported the remarks made by Mr. Bhagwati and Mr. Klein on enhancing the effectiveness of the Committee's work, including through concrete follow-up measures. With regard to the question of consolidating the various human rights bodies, he believed that it was more important to consider the interplay of all rights than to consider each right individually. The Committee had an important role to play in that regard, since all the issues dealt with by the various treaty bodies were referred to in the International Covenant on Civil and Political Rights. For the time being, the best form of collaboration was the meeting of persons chairing treaty bodies, which should strive to establish some consistency in the case law of the various treaty bodies. Lastly, he agreed with Mr. Scheinin that, in the current difficult financial situation, committees should make every effort to preserve the quality of their work and should request all necessary support from the Office of the High Commissioner for Human Rights.

31. The CHAIRPERSON pointed out that very few States had commented on the question of consolidating the treaty bodies. Moreover, during an informal meeting following the recent extraordinary meeting of chairpersons in February, States parties had rejected the idea. In that connection, she referred to paragraph 38 of the report of the eighth meeting of persons chairing the human rights treaty bodies (A/52/507). That report described other measures proposed by the chairpersons to ease the burden of overlapping reports due by States parties, some of which were already being implemented. For example, experts from various committees could assist States in the preparation of their reports with a view to avoiding duplication, as Mr. Lallah and Mr. Prado Vallejo had recently done. The system of focused reports would also be effective to that end. Contact among the treaty bodies beyond the meeting of chairpersons would be useful as well. For example, the Committee on the Elimination of All Forms of Discrimination against Women could be consulted in the drafting of the general comment on article 3. On the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, it would be best not to complicate matters by creating additional bodies but rather, as Mr. Zakhia had said, to encourage collaboration among the existing treaty bodies.

32. Lastly, she welcomed Mr. Pocar's proposal concerning the study of legal obstacles, such as the succession of States or reservations, to the ratification of human rights instruments. Such an initiative could make a genuine contribution and would be of interest to other human rights treaty bodies as well.

33. Mr. POCAR said that universal ratification would facilitate consolidation of the treaty bodies or the establishment of permanent machinery in the United Nations system to monitor compliance with the human rights instruments. If the

Committee wished, he could prepare an informal working paper, on the basis of the document submitted to the World Conference, for discussion at its July session.

34. The CHAIRPERSON added that such a study might provide an occasion to request additional resources.

35. Ms. EVATT welcomed the positive and rich discussion that had taken place in the Committee. She proposed that a paper should be submitted to the working group, containing some of the themes of the discussion on the question of follow-up, and that a document should be prepared, containing the views of the Committee members on how to deal with the problem of States parties' overlapping obligations. In that connection, she supported the remarks of Mr. Pocar and the Chairperson concerning universal ratification. Such an initiative would send a very meaningful message on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights.

ORGANIZATIONAL AND OTHER MATTERS

Methods of work of the Committee under Article 40 of the Covenant (continued)

36. Mr. POCAR, speaking as chairperson of the working group established in connection with the request, in paragraph 5 of resolution 1997/21 of the Commission on Human Rights, that the Secretary-General should seek the views of and information from, inter alia, the human rights treaty bodies in preparing an analytical report on the issue of fundamental standards of humanity, new attention to the draft letter addressed to the Commission, which was before the Committee. In it, the Committee inter alia expressed the intention of preparing a general comment on the question of the power of States parties to derogate from their Covenant obligations in times of public emergency, revising the general comment adopted many years earlier on article 4. The new general comment would stress the protection of certain procedural rights that were closely related to the non-derogable rights set forth in article 4, paragraph 2, of the Covenant and the other obligations referred to in article 4, paragraph 1. The interpretation of the latter would require in-depth discussion by the Committee.

37. Ms. EVATT proposed a minor editing change and expressed the concern that some of the "other obligations" referred to, but not enumerated, in article 4, paragraph 1, of the Covenant, such as the procedural rights mentioned by Mr. Pocar, might be peremptory.

38. Mr. SCHEININ said that the reference in the first paragraph should be to "an analytical report on the issue of fundamental standards of humanity" in order to reflect the language of Commission resolution 1997/21, paragraph 4. He believed that Ms. Evatt's concerns were already covered by the penultimate paragraph of the draft letter.

39. Mr. KLEIN agreed, adding that the letter to the Commission should not be laden with details.

40. The Committee's draft letter on minimum humanitarian standards, addressed to the Commission on Human Rights, as orally amended, was adopted.

The public part of the meeting rose at 12.20 p.m.