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HUMAN RIGHTS COMMITTEE

Fifty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1382nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 November 1994, at 10 a.m.

Chairman: Mr. ANDO

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1382/Add.1.

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

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Draft general comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant (CCPR/C/52/CRP.1/Rev.1) (continued)

1. The CHAIRMAN invited the Committee to resume consideration of the text of the general comment on reservations, as revised by Mrs. Higgins (CCPR/C/52/CRP.1/Rev.1), paragraphs 1 to 19 of which had been adopted as amended.

Paragraph 20

2. Mrs. HIGGINS pointed out a number of typographical errors mentioned by Mr. Wennergren; he had also made some drafting proposals which she accepted. He proposed that the sentence beginning "Because of the special character" (towards the middle of the paragraph) should conclude with the words "legal principles" in the plural; he also proposed an amendment to the second-last sentence to read: "The normal consequence of an unacceptable reservation is that the Covenant will be in effect for a reserving party." The advantage would be the removal of the double negative in the English version of the sentence.

3. The CHAIRMAN, speaking in a personal capacity, requested clarification of the meaning of the last sentence of paragraph 20. Was it to be understood that the Covenant should be considered applicable to the State party, except for the unacceptable provision in question?

4. Mrs. HIGGINS replied that that was not the case. The most frequent outcome was that when a State party entered an unacceptable reservation it was not taken into consideration; it was struck down, requiring the State party to apply the Covenant without benefiting from the reservation, in application of treaty law.

5. Mrs. EVATT pointed out in that regard that the Committee had never indicated what principle could be applied to ascertain whether or not a reservation was severable. She was not certain that it would be easy to include the basic elements for a decision of that nature in a general comment.

6. Mrs. HIGGINS said that that was a key element in treaty law and that it could basically be summed up by the following. When a reservation was so fraught with consequences that, in the opinion of the body responsible for the follow-up of the treaty, the obligations stemming from it had not been accepted, it was considered that the State which was the author of the reservation was in no way a party to the treaty. It was clear that in the case of human rights instruments, that was not a desired result; hence the sentence originally reading "The consequence of an unacceptable reservation is not usually that" etc., which had just been amended.

7. The CHAIRMAN pointed out that the expression "the object and purpose" in the English version was sometimes used in the singular and sometimes in the plural.

8. Mrs. HIGGINS said that the expression was generally used in the singular.

9. Mrs. CHANET said that she would prefer the last sentence but one of the French version to read "Le Comité est particulièrement bien placé" rather than "Le Comité est idéalement placé."

10. Mr. BRUNI CELLI wondered whether the last sentence was completely satisfactory from a strictly juridical point of view. Could a reservation really be considered to be severable, and would States parties agree to the Covenant being declared operative for them without account being taken of their reservation?

11. Mrs. HIGGINS replied that that was indeed a very important point. What would happen when the Committee was required to give a ruling as to whether a reservation was compatible with the object and purpose of the Covenant and gave a negative response? What would the legal consequences of that decision be? On the basis of treaty law, she was sure that in 99 per cent of cases the consequence would be that the State which had entered an unacceptable reservation had in fact accepted the treaty as a whole and that the reservation would not be taken into account. In other words, the Committee could question the State party on the application of the Covenant, including those areas to which the reservation referred. In support of her view, she was able to quote two individual opinions expressed by judges of the International Court of Justice whereby if a reservation was so fundamental that it could genuinely be considered that the State which had entered it had not accepted the treaty at all, that was the conclusion to be drawn. In the case of human rights instruments, however, it was not desirable to exclude States parties; rather it was preferable to keep them, hence the phrasing of the second-last sentence of paragraph 20.

12. Mr. WENNERGREN would have liked a new paragraph to be added concerning the withdrawal of reservations. Paragraph 22 of the text under consideration referred to keeping reservations but not in so many words to withdrawing them. He would like to include the conditions in that regard set out in article 22 of the Vienna Convention which he proceeded to read out:

> "1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
>
> 2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.
>
> 3. Unless the treaty otherwise provides, or it is otherwise agreed:
>
> (a) The withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;
>
> (b) The withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation."

13. Mrs. HIGGINS was not in favour of that idea, particularly as the question of withdrawing a reservation under the conditions of article 22 could not arise in practice, since the Convention made no provision for other States raising objections to reservations by a State party.

14. The CHAIRMAN drew attention to the second-last sentence of paragraph 22 which requested States periodically to review the necessity for maintaining reservations. That would perhaps answer Mr. Wennergren's concern. Since the latter agreed, he invited the Committee to adopt paragraph 20 with the editorial changes that had been made to it.

15. Paragraph 20, as amended, was adopted.

Paragraph 21

16. Mr. SADI proposed two amendments, the first of which was to add the words "and the States parties in general" before "may be clear as to what obligations …", and the second to add in the second sentence the words "or part thereof" after "a particular article of the Covenant".

17. Mr. POCAR also wished to propose an amendment to the second sentence and requested that "un article determiné" should be replaced by "des dispositions d'un article determiné", but he would accept Mr. Sadi's wording. The sentence beginning "So that reservations should not represent" posed a problem for him. He was thinking in particular of a country like the Congo which had entered a reservation to article 11 of the Covenant since the Congolese Civil Code provided for the possibility of imprisonment for debt referred to in that article; he noted that 90 per cent of reservations were of that nature. The sentence should perhaps be worded more flexibly.

18. Mr. BRUNI CELLI had doubts about the same sentence and wondered whether the principle set out in it was not linked to article 2, paragraph 2 of the Covenant, whereby "each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant". He asked whether that obligation could not be mentioned in paragraph 21.

19. Mr. EL SHAFEI pointed out with reference to the same sentence that domestic legislations were sometimes completely in keeping with the requirements of the Covenant. In his opinion, the sentence was too general and should be reworded to make it more precise.

20. Mrs. EVATT said that, in order to comply with the obligations of the Covenant and respect its spirit, States should make efforts to apply its provisions, and even to amend their legislation when they could, instead of resorting to the facile solution of restricting the obligations to those already arising from domestic law. The Committee's goal was to encourage States to make sincere efforts to comply with the Covenant, while the text under consideration tended to propose a facile solution. With regard to the last two sentences, she thought that the attention of States should be drawn to the effect that the initiatives they described would have, rather than that they should be told what not to do and that interpretative declarations had no real effect on their obligations.

21. Mr. BAN had the same doubts as Mr. El Shafei about the fifth sentence according to which "So that reservations should not represent a perpetual non-attainment of international human rights standards, reservations should not reduce the obligations undertaken only to those presently existing in domestic law", since the sentence was perhaps not completely clear to the reader and could be interpreted in two ways. If a State party entered several reservations

concerning specific articles of the Covenant and indicated that it was doing so because its legislation did not cover the areas to which the articles in question referred, that was permissible, except in the case of non-derogable articles defined elsewhere in the general comment. That was, in his opinion, a first possible interpretation of the sentence.

22. The second interpretation would be that States were not permitted to enter a general reservation by stating that it was not possible for them to recognize rights other than those recognized in the legislation currently in force in their countries. Such a reservation was unacceptable. That, however, had already been indicated more succinctly in the second sentence of paragraph 21 which stated that "Reservations may thus not be general". Consequently, the second part of the fifth sentence was simply a repetition of the principle set out earlier and was in his opinion superfluous.

23. Mr. PRADO VALLEJO would in the first place like the fourth sentence to be reworded to state that States should not enter so many reservations that they distorted the Covenant by actually accepting a limited number of obligations. Secondly, he would also like the fifth sentence to be reworded where it referred to a perpetual non-attainment of international human rights standards, since he found the choice of terms, particularly "non-attainment", inappropriate in the Spanish version of the text. Lastly, in the final sentence, he proposed the addition of "international" before "organ of any other treaty body".

24. Mr. AGUILAR URBINA said in answer that the term "fracaso" in the Spanish version was wrong and that for that reason the sentence did not make sense. It should be amended in Spanish to read: "no impidan permanentemente el logro …".

25. Mr. LALLAH was not sure that he understood the fourth sentence ("States should not enter so many reservations …"). It should be clearly stated what was expected of States.

26. Mr. EL SHAFEI thought that the second clause in the fifth sentence should be deleted ("reservations should not reduce the obligations … domestic law"). It was international human rights standards that were important and it could be the case that a domestic provision was more progressive than international standards. The Committee had already encountered such cases.

27. Further clarification would also be necessary in the last sentence since he wondered if "an organ of any other treaty body" referred only to the European Convention on Human Rights or also to other treaties, for example, regional treaties.

28. Mrs. HIGGINS began by addressing the issue of the fifth sentence, which had given rise to concern among members of the Committee, the majority of whom thought that, as currently worded, the sentence implied that any reservation entered to indicate that a provision of domestic law was applied to the exclusion of any other standard was necessarily contrary to the object and purpose of the Covenant. As the members of the Committee had said, that was not correct. Domestic law could indeed be stricter than international standards, and in any case a large number of the reservations to the Covenant came into that category; the Committee had never considered that they posed problems. In her opinion, it was essential to address the matter, but the text could certainly be improved. She proposed that the sentence should be amended to read:

"So that reservations should not represent a perpetual non-attainment of international human rights standards, reservations should not systematically reduce the obligations undertaken …", or, as another possibility: "… reservations should not reduce the totality of obligations", etc.

29. With regard to the possible mention of the obligation to amend domestic law, she objected that no such obligation actually existed since, if a State agreed to be bound by the Covenant, it was required to amend domestic law to make it compatible with the Covenant.

30. In order to take Mr. Prado Vallejo's proposal into account, the fourth sentence could possibly be amended to read: "States should not enter so many reservations that they distort the Covenant by accepting a limited number of human rights obligations, and not accepting the Covenant as such."

31. With regard to the last sentence, she accepted the proposal to add the adjective "international" to "an organ of any other treaty body". Although the Committee had up to that time dealt essentially with European States that invoked the European Convention, it was clear that reference could be to an organ established under another regional treaty, for example, a Latin American treaty.

32. Lastly, she was unable to support Mrs. Evatt's proposal to reword the last two sentences in order to stress the effect of the reservations. That aspect was addressed in the rest of the general comment, and it was logical that the Committee would subsequently indicate to States parties what they ought not to do.

33. Mr. DIMITRIJEVIC was of the opinion that the first proposal to amend the fifth sentence - the addition of the adverb "systematically" - was preferable to the second. Furthermore, since a provision of domestic law could often be more binding than the equivalent standard in an international instrument, it would be helpful to qualify domestic standards in the following way: "Reservations should not reduce the obligations undertaken only to the presently existing less demanding standards of domestic law."

34. After listening to the reading of the whole of the fourth sentence as amended to take account of the proposal by Mr. Prado Vallejo, he was persuaded that the sentence should remain unchanged.

35. Mr. LALLAH shared Mr. Dimitrijevic's opinion concerning the fourth sentence. As for the fifth sentence, it would be clearer if it read: "So that reservations do not lead to a perpetual non-attainment …, reservations," etc.

36. The proposal concerning the fifth sentence was adopted.

37. Mrs. HIGGINS took it that, of the two forms of wording she had proposed for the fifth sentence, it was the first - the addition of the adverb "systematically" - that the other members of the Committee preferred. She read out paragraph 21 as it would read once all the amendments had been incorporated.

38. Paragraph 21, as orally amended, was adopted.

39. The CHAIRMAN invited the Committee to comment on paragraph 22.

40. Mrs. EVATT said that the last paragraph was the place for the Committee to state that reservations should be withdrawn as soon as possible; a sentence could be inserted before the existing last sentence. The last sentence of the existing text could also be supplemented in that regard ("to review, reconsider and withdraw reservations").

41. In the first sentence, it would be preferable to replace "it will not be prepared to render" by "it is not able to render …" since it would be better to refer to an inability on the part of the State rather than its unwillingness.

42. The proposals were adopted.

43. Mr. WENNERGREN proposed the addition of "domestic" in the second line of the paragraph ("domestic legislation or practices").

44. The proposal was adopted.

45. Mr. EL SHAFEI wondered what could be the raison d'être of the institution of certain procedures in the second sentence. It seemed to him that the purpose of the paragraph was not to request States to institute procedures to ensure that every reservation was compatible with the object and purpose of the Covenant but to stress the necessity for the periodic review and reconsideration of the reservations.

46. Mr. PRADO VALLEJO was of the opinion that the second part of the second sentence of the paragraph was not justified since it was tantamount to putting a completely rhetorical question to the States. No State was going to say that "the greatest care" had not been addressed to the importance of promoting the human rights in the Covenant. That clause weakened the text and it would be advisable to delete it.

47. Mr. BRUNI CELLI, referring to the end of the first sentence where the State was requested to explain why it would not be prepared to render its own laws and practices compatible with the Covenant, did not see why it was necessary to give the State party an opportunity to explain the matter. The Committee should demand more than explanations.

48. Mr. LALLAH suggested that the adjective "proposed" should be added in the second sentence to qualify "reservation" ("to ensure that each and every reservation proposed is compatible …").

49. The proposal was adopted.

50. Mrs. EVATT proposed that the second sentence of the text should be placed at the start of the paragraph in order to indicate straightaway what the Committee expected from States.

51. Mrs. HIGGINS, replying to Mr. Bruni Celli who feared that the Committee might be too indulgent in asking States parties to explain why they were not prepared to render their laws and practices compatible with the Covenant, pointed out that in raising that issue during consideration of a periodic report the Committee could partially open a window of opportunity and hope to persuade the State party.

52. If the Committee requested States parties to institute procedures to ensure that each reservation was compatible with the object and purpose of the Convention, it was to ensure that States parties were not casual about entering reservations.

53. Mrs. HIGGINS recapitulated the amendments that had been made to the text and read out the paragraph as it would stand once all the amendments had been incorporated.

54. Paragraph 22, as orally amended, was adopted.

55. The CHAIRMAN then invited the members of the Committee to consider a draft of paragraph 12 bis and a draft of paragraph 12 ter (or 14 bis) of which he was the author (the text was distributed in English only without a symbol). According to draft paragraph 12 bis, the Committee "notes that the exercise of certain rights provided in the Covenant can be restricted only on the grounds enumerated in the Covenant itself". Article 19 of the Covenant was cited as an example. A reservation that introduced other grounds for restricting the rights was not compatible with the object and purpose of the Covenant.

56. Draft paragraph 12 ter (or 14 bis) concerned the procedure by which a right the Covenant protected could be limited. It stated that the procedural requirements were absolute and that a reservation which excluded such requirements was not compatible with the object and purpose of the Covenant. Reference was made to the example of article 13 of the Covenant.

57. Following an exchange of views with the members of the Committee, in which Mrs. EVATT, Mrs. HIGGINS, Mr. DIMITRIJEVIC, Mr. EL SHAFEI, Mr. LALLAH and Mr. POCAR participated, the CHAIRMAN withdrew his draft of paragraphs 12 bis and 12 ter (or 14 bis) and announced that he would come back to that issue when the Committee's general comments concerning specific articles of the Covenant were considered.

58. Mrs. HIGGINS recalled that the Committee still had to take a decision on two points: the first was the reference to article 41 in the heading of the general comment. The second concerned the wording in square brackets in paragraph 2 as orally amended.

59. With regard to paragraph 2, she recalled the various points of view expressed by members of the Committee at an earlier meeting and suggested the adoption of the wording proposed by Mrs. Chanet, namely, the replacement of "policy" by "human rights policy" in the first sentence, and the addition of "and human rights policy considerations" after "legal" in the last sentence of the paragraph.

60. The CHAIRMAN took it that the members of the Committee as a whole wished to keep the reference to article 41 of the Covenant in the heading of the general comment (CCPR/C/52/CRP.1/Rev.1).

63. It was so decided.

64. The CHAIRMAN invited the members of the Committee to take a decision on the overall text of the general comment (CCPR/C/52/CRP.1/Rev.1) as orally amended.

65. Mr. POCAR supported the text overall but would like to know to what exactly the figure 150 in paragraph 1 corresponded: whether it applied only to reservations proper or included interpretative declarations.

66. Mr. DIMITRIJEVIC considered that Mr. Pocar's question was an important one, insofar as the text later went on to state that the Committee must determine what in its opinion was a reservation and what was not. In his opinion, it would be more judicious simply to say in the first sentence of paragraph 1 that the Committee noted that States parties to the Covenant had entered a very large number of reservations. It was all the more important to mention that fact, however, since the proportion of reservations was much greater for human rights instruments than for other international instruments.

67. Mr. FRANCIS raised the possibility of adding a footnote stating that the Committee had not determined whether all the cases were reservations in the proper sense of the term.

68. Mrs. HIGGINS took it that the Committee should take a decision on two issues. The first was the suggestion that the figure 150 should be deleted, which in her opinion did not present any problem. She wondered, however, if it would not then also be advisable to delete the exact number of the States parties to the Covenant. Secondly, with regard to Mr. Pocar's question, she thought that it would be better only to refer to "reservations", since additional details as to what was meant by that term would diminish the impact of the sentence. She specified that the figure 150 applied to what the States parties considered to be reservations and did not include interpretative declarations.

69. Mrs. EVATT considered that, in the circumstances, it would be better to leave the text of the first sentence as it stood.

70. The CHAIRMAN took it that the members of the Committee overall wished to keep the wording of paragraph 1 as it stood following the oral amendments adopted at an earlier meeting. It was also understood that the secretariat would ensure that the necessary drafting changes were made to all the paragraphs.

71. It was so decided.

72. The whole of the draft general comment on reservations, as revised by Mrs. Higgins (CCPR/C/52/CRP.1/Rev.1) and as amended orally, was adopted.

The first part (public) of the meeting rose at 12.10 p.m.