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Seventy-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2016th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 10 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.2016/Add.1.

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

CONSIDERATION OF REPORTS SUBMITTED BY STATE PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of New Zealand (continued) (CCPR/C/NZL/2001/4; HRI/CORE/1/Add.33; CCPR/C/74/L/NZL)

1. At the invitation of the Chairperson, the members of the delegation of New Zealand resumed their places at the Committee table.

2. The CHAIRPERSON invited the members of the delegation to continue responding to the additional questions raised by the Committee.

3. Mr. CAUGHLEY (New Zealand) said that his delegation's replies had been grouped into broad subject areas, rather than by sequence or order of articles, in order to facilitate discussion later. The first area concerned the reasons why human rights law had not been accorded higher status than ordinary legislation.

4. Ms. BUTLER (New Zealand) said that the granting of supreme status to the Bill of Rights Act 1990 (BORA) would require a special majority in Parliament or a referendum. At the constitutional conference convened by the Government in 2000, which had brought together academics, the judiciary, members of Parliament and members of the Maori community, it had been evident that the objections to incorporating a bill of rights as supreme law had not changed since the Select Committee on the subject had convened in 1987. However, in practice, the BORA was often used to limit, and sometimes augment, statutes, regulations and governmental practices. The courts were required by law to interpret a statute in accordance with the provisions of the BORA wherever possible. The courts now wielded considerable power in matters of protecting rights and freedoms. The Human Rights Act 2001 guaranteed implementation of the new judicial remedies which had been introduced to give effect to the rights guaranteed. Under the same Act, complaints relating to discrimination could be addressed to the Human Rights Commission in relation to all government activities, through a publicly-funded process.

5. Under section 7 of the BORA, the Ministry of Justice and the Crown Law Office assessed bills at the vetting stage with a view to preventing the adoption of legislation that contradicted the BORA.

6. In response to questions put by Mr. Lallah, Mr. Klein and Mr. Scheinin she said that, since the 1994 decision by the Court of Appeal in the case of Tavita v. Minister of Immigration, the courts had routinely taken international human rights instruments into account in judicial review cases - especially those involving immigration - and had also taken into account the Human Rights Committee's general comments on a number of occasions. Lawyers in New Zealand were becoming less insular, in the sense that foreign law and decisions by foreign courts were frequently brought to the courts' attention. In addition to the relevant international treaties and Covenants, the courts themselves had also referred to rulings made by the courts of other countries. However, no mechanism currently existed to alert the Government to the fact

that a court had been unable to incorporate such international instruments into its decision-making owing to the narrowness of the relevant New Zealand legislation. Instead, the Government looked to the relevant department or the Human Rights Commission to draw its attention to such cases. Finally, in New Zealand the remedies available to individuals in the event of violations of their rights under the Covenant also provided for the amendment or repeal of the offending legislation.

7. With regard to the Barlow case, her Government considered that the BORA and the existing domestic legislation adequately met the requirements of the Covenant's provisions concerning the right to liberty and security of the person.

8. Ms. GWYN (New Zealand), responding to a question put by Mr. Yalden, said that the transitional period during which the Government had been granted exemption from the Human Rights Act 1993 had not been extended beyond 31 December 2001. As from 1 January 2002, the Human Rights Amendment Act 2001 applied a non-discrimination standard to private-sector activities and to public-sector activities relating to employment, racial harassment, sexual harassment, racial disharmony and victimization. As a complementary provision, the new part I A of the Human Rights Act stipulated that the non-discrimination standard provided for in the BORA applied to all public-sector (government) activities except those she had just listed. In addition, a publicly funded complaints process, supervised by the Human Rights Commission, was available in respect of all forms of discrimination, whether in the private or public sector.

9. Concerning the questions about the volume of complaints made to the Ombudsman and the Human Rights Commission on racial discrimination grounds, she said that the Ombudsman's Office did not keep records of such complaints, since they were forwarded immediately to the Human Rights Commission or the Race Relations Commissioner. Prior to the merger of the Race Relations Office and the Human Rights Commission, i.e. the period from mid-1997 to 31 December 2001, the Race Relations Office had recorded 1,286 complaints classified as involving racial disharmony, racial harassment or both. Of the 1,085 such cases in which the complainant's ethnicity had been recorded, 267 had involved Maori. Since 1 January 2002, there had been a total of 73 race-related complaints. Out of the 40 in which the complainant's ethnicity had been recorded, 10 had involved Maori.

10. Finally, in reply to questions put by Mr. Bhagwati and Mr. Yalden, she said that since 1995 the Human Rights Commission had made four recommendations to the Prime Minister on substantive human rights issues. No action had been taken with regard to two, one had been acted upon, and the fourth had been subsequently implemented, although it was unclear whether that had been in response to the Commission's recommendation. With regard to the statement in the 1997 annual report on race relations that 87 per cent of the population did not believe that Maori needed special treatment, she replied that neither the Race Relations Commission nor the Human Rights Commission had posed such a question in subsequent surveys. However, in a telephone poll of 350 people conducted by the Human Rights Commission in 2000, 16 per cent of respondents had expressed the opinion that Maori experienced a great deal of discrimination, 54 per cent some discrimination, and 17 per cent "only a little". One of the main functions of the Human Rights Commission was to promote a

better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law. The Commission intended to produce a discussion document on that subject later in the year. In response to questions put by Mr. Bhagwati, Mr. Lallah and Mr. Ando, she said that the Human Rights Act treated both language and accent as aspects of racial identity and ethnic or national origin which were included among grounds for racial discrimination. Subsequent jurisprudence had upheld that view in New Zealand, as it had in other countries, including Canada and Australia.

11. Finally, in reply to Mr. Solari Yrigoyen, she said that the freedoms of thought, religion and conscience guaranteed under article 18 of the Covenant were embodied in sections 13 and 15 of the BORA. Moreover, the Human Rights Act also guaranteed religious belief by, inter alia, requiring employers to accommodate their employees' religious practices as long as they did not disrupt the employers' activities.

12. Ms. BUTLER (New Zealand), in reply to Mr. Yalden, listed the main achievements in the field of human rights protection in New Zealand during the current year: the establishment of effective and vigorous national human rights institutions, including primarily the Human Rights Commission, but also the privacy commissioner, the health and disability commissioner, and the commissioner for children; the further development of jurisprudence concerning human rights and matters covered by the BORA; the emergence of a holistic approach to human rights issues that would be further developed through the Commission's national plan of action and the Government's commitment to human rights considerations; a universally accessible publicly-funded complaints process for both public and private sectors; increasing emphasis on proactive education rather than ad hoc responses to individual human rights issues or complaints; a favourable climate of public opinion towards human rights, as measured by a survey conducted by the Commission at the end of 2001; diversification in the types of issues addressed; and, in relation to the Covenant, a more mature level of debate concerning the specific measures which would best give effect to the intentions of the parties.

13. Citing some practical illustrations, she noted that, at a recent conference, the President of the Court of Appeal had presented statistics showing that the Court's decisions involved a preponderance of issues relating to the BORA. In the year to 30 June 2001, there had been a 65 per cent increase in the number of complaints made to the Commission. Delays in their processing had been kept to a minimum thanks to the emphasis placed on achieving outcomes which were both timely and fair to all concerned. In the same period, 46 per cent of the alleged breaches of the Act concerned employment, and a further quarter the provision of goods and services.

14. The ground for discrimination cited most often was disability, with the second most frequent being sexual harassment. In the year 1999-2000, 3 per cent of complaints had related to discrimination on religious grounds. With 28 complaints being referred to the proceedings commission, the Commissioner had completed the examination of 39 complaints. He had decided not to institute proceedings in 10 cases, 22 cases had been settled, 4 cases had not proceeded for reasons such as the impossibility of contacting the complainant, and 3 had been upheld by the Complaints Review Tribunal.

15. Mr. CAUGHLEY (New Zealand), responding to a question put by Mr. Lallah, said that the amendments proposed for the Suppression of Terrorism Bill in the light of the attacks of 11 September, and which mainly concerned the implementation of the finance-related elements of United Nations Security Council resolution 1373 (2001), had been assessed by the Crown Law Office in November 2001 in order to identify any inconsistencies with the BORA. Those who had carried out the exercise had been able to inform the Attorney-General and the Select Committee that the amendments involved no inconsistencies and that, overall, the changes made since the interim report provided for greater protection of rights and freedoms. The Select Committee had thoroughly examined all elements of the amendments from a human rights perspective, placing particular emphasis on issues relating to the definition of a terrorist act, the designation procedure and rights of judicial review, and on the mechanisms in place for the protection of classified information. The Committee had been particularly concerned that the definition of a terrorist act should not be so broad that it might be used against persons genuinely participating in "acts of protest, advocacy, dissent, strike, lock-out or other form of industrial action", where such acts by themselves were not undertaken for a terrorist purpose. The same applied to other situations not involving terrorism in the strict sense.

16. With regard to judicial review, the special procedure originally proposed had been replaced by a process which made ministers, not judges, responsible for making designations. Those ministers included the Attorney-General, who thus performed a monitoring role at both the interim and final stages. The Select Committee had also recommended a new mechanism enabling classified information to be put before the High Court in certain types of proceedings, if necessary in the absence of the designated entity, its lawyers and the public.

17. Turning to a series of questions put by Mr. Scheinin, he said that since the submission of the New Zealand report in December 2001, his Government, together with other regional organizations and donors, had worked constantly to raise the Pacific Island countries' awareness of the international measures being taken to combat terrorism and their international obligations in that regard. New Zealand, together with the United States and Australia, had funded a regional seminar in Honolulu in April at which the nature of the Pacific countries' obligations under Security Council resolution 1373 (2001) had been examined in detail.

18. With regard to the exemption to non-refoulement contained in section 7 of the Immigration Act, he said that section 129 X of that Act incorporated New Zealand's non-refoulement obligation into domestic law. Concerning the risk profiles used with potential refugees, New Zealand was simply seeking consistency with other like-minded countries. The process involved narrowing down the potential numbers by reference to relevant distinguishing personal characteristics; individual decisions were always based on the facts of the case. His Government's policy was to manage immigration risks as much as possible beyond its borders, interdiction being one of the mechanisms used. Immigration risks arose when there was the likelihood of non-compliance with immigration policies. All such policies were developed at cabinet level through a process which involved a human rights assessment. New Zealand's policy was to encourage prospective claimants for refugee status to approach UNHCR, from which it accepted approximately 750 refugees every year. New Zealand sought to dissuade claimants from entering unlawfully, but accepted its obligations in relation to non-refoulement

and the prompt settlement of claims for refugee status. In accepting so many refugees approved by the United Nations, New Zealand was adopting a proactive approach to its obligation to ensure that genuine refugees and those at risk of torture were not prevented from entering the country. His Government did not accept that it had a responsibility to facilitate the arrival of spontaneous refugee claimants; it strongly preferred them to use the proper United Nations channels. Nevertheless, the protection his country afforded to refugees/asylum-seekers was commensurate with that stipulated in the relevant international instruments.

19. Finally, as to the question whether his Government intended to define a specific crime of terrorism in the New Zealand Crimes Act in the light of its adoption of the Suppression of Terrorism Bill in 2001, he said that New Zealand's report to the Security Council's Counter-Terrorism Committee had made it clear that "terrorist activity" would be listed as an aggravating factor for the purpose of sentencing under the Sentencing Act 2002, which had recently come into force. However, that decision, taken at cabinet level, was not intended to create a separate and distinct new general criminal offence of "terrorist act". New Zealand law already contained a number of criminal provisions based on the international anti-terrorist conventions to which New Zealand was a party. Moreover, a whole range of terrorist acts were covered by the existing criminal offences. His Government was satisfied that the existing criminal provisions, as supplemented by the new Sentencing Act, provided sufficient protection.

20. Two stages were proposed for the designation of a terrorist entity. The first interim designation was to be undertaken by the Prime Minister, in consultation with the Minister for Foreign Affairs and Trade and the Attorney-General. The Leader of the Opposition was to be notified of the designation as soon as possible. Final designation would also be made by the Prime Minister but in consultation with the Attorney-General only. It had been agreed that the decision should be made at the highest level with clear political accountability and the Attorney-General had been involved as a way of introducing a form of legal check on the decision-making. The initial designation was based on the lesser standard of "reasonable cause to suspect" and was intended to allow action to be taken quickly before suspected terrorist assets could be removed from the country. It had not been decided that the courts should make the designation because it was vital that action should be able to be taken immediately, particularly at the interim stage. The grounds for final designation had a higher threshold, that of "reasonable grounds to believe", and its duration had been reduced from five to three years, although that could be extended.

21. In response to the question whether at least one crime punishable without a link to terrorism must be committed before designation of an entity as terrorist, he said that designation was based on cause to suspect that an entity had carried out, or participated in the carrying-out of, one or more terrorist acts. There was no requirement that the entity should have committed some criminal offence linked to terrorism. The definition of "carrying-out" included cases in which there was planning, preparation, threats or attempts but in which terrorist acts were not actually committed. In response to Mr. Lallah's complaint that the Committee had not been provided with a copy of New Zealand's report to the United Nations Counter-Terrorism Committee (S/2001/1269), he said that the Government was aware that there were important human rights dimensions to the anti-terrorism legislation that was being prepared to implement Security Council resolution 1373 (2001). Information on that pending legislation would undoubtedly be a significant element of the country's fifth periodic report.

22. A number of questions had been asked about asylum and possible changes in New Zealand's policy towards refugees since the events of 11 September. The operational instruction relating to detention at the border had been developed with significant legal input, part of which related to Human Rights Act issues, BORA issues and immigration issues. It had been amended in order to comply with the recent decision of the High Court in the current Refugee Council proceedings. The purpose of the Government's appeal in those proceedings had been to clarify the circumstances under which refugee status claimants could properly be detained under the Convention relating to the Status of Refugees and New Zealand law, including the BORA, which affirmed the rights protected under the Covenant as part of New Zealand domestic law. All agencies of the Government were required to act in accordance with the BORA.

23. As far as the human rights of those extradited from New Zealand were concerned, he said that the Extradition Act 1999, which governed the process, included various types of protection. The offence must involve conduct which would be regarded as criminal in New Zealand. There were also mandatory restrictions on surrender if the offence for which the person was sought was of a political character, or if extradition was for the purpose of prosecuting or punishing the person on account of his or her race, ethnic origin, religion, nationality, sex or other status, or political opinions, or if the conduct constituted an offence under military law only. Illegal migrants were removed or criminals deported only after the non-refoulement obligation in the Convention had been met and it had been ensured that the person concerned had the documentation necessary for entry into the country of nationality or the country of last boarding. In some cases, deportees could go to third countries of choice and, if there was an allegation of possible torture on return, the Convention against Torture was applied in order to assess whether deportation should not take place.

24. Mr. PAKI (New Zealand) said that Mr. Yalden and Mr. Ando had asked what was the objective of the Maori language strategy. The Government's objectives were to increase the number of people who knew the language by enhancing their opportunities to learn Maori, to improve the proficiency of people speaking, reading and writing it, to increase opportunities to use Maori and to hasten the rate at which the language developed so that it could be applied to a full range of modern activities. The Government also aimed to foster a positive attitude among Maori towards their language so that bilingualism became a valued aspect of Maori society. Maori had been declared an official language of New Zealand in the Maori Language Act of 1987. In 2001, some 25 per cent of Maori (130,000 people) had indicated that they were able to converse in Maori about everyday topics. Proficiency varied widely and most made only limited use of their Maori language skills. Its use was highest in education and in Maori cultural activities.

25. There was explicit provision for use of the Maori language in Parliament and the courts, and there were no legal impediments to its use in any other situation. Judges of the Maori Land Court were required to be competent in the language. Within government departments, there was a range of approaches towards using Maori. Agencies were encouraged to develop internal language plans in order to be able to offer Maori language services to their clients but Maori language use was not yet widespread across the public sector, although agency titles were given in Maori and English, positions were advertised in both languages, and information and

promotional items were made available in Maori and English. Legislation pertaining to the Maori language and culture was printed in Maori from time to time, and a number of international instruments, including the Universal Declaration of Human Rights, had been printed in Maori. A bilingual publication of the Convention on Biological Diversity was currently being completed. The International Covenant on Civil and Political Rights had been translated into Maori. If recognition of the Maori language was refused, the Maori Language Commission and the New Zealand Human Rights Commission could be approached for support and advice.

26. The ultimate objective of Maori language education was to ensure that Maori should succeed in education in ways that were meaningful to them. Education was seen by Maori as the key to success and leadership in all aspects of Maori life and development. Young Maori expected to emerge from Maori language education with an increased awareness of their own culture, a strengthened Maori identity and a sense of place in New Zealand society. Maori graduates were highly sought after in both the public and private sectors and were expected to be leaders of their communities. Currently, 35,000 Maori children were participating in education given in Maori in the pre-school and compulsory school sectors. An additional 50,000 Maori children studied Maori as a subject. Eighty-three per cent of Maori parents of children enrolled in schools teaching in Maori were satisfied with the outcome, compared to 65 per cent of parents with children in mainstream schools where Maori was taught only as a separate subject.

27. A range of laws in New Zealand protected Maori culture and customary practices. Examples were the Treaty of Waitangi (Fisheries Claims) Settlement Act of 1992, providing for the recognition and protection of non-commercial customary fisheries rights, and the Resource Management Act of 1991, recognizing Maori customs in relation to natural and physical resources. In terms of common law, the courts had developed a number of requirements for the recognition of custom law, including the use of qualified experts. In general, the courts were moving away from the view that legal process must comply with formal court procedures. Evolving jurisprudence drew on both British law and Maori custom law.

28. In response to Mr. Scheinin's question, he said that there was no general right of Maori self-determination in the sense of self-government or complete autonomy, but rather an evolving relationship involving a steady increase in the number of areas in which the transfer of resources or the delegation of authority to Maori enabled them to exercise a greater degree of self-determination. Since 1985, the New Zealand Government had been engaged with Maori tribes in settling claims dating back to 1840, the year of the Treaty of Waitangi. Those settlements had been pivotal in restoring the ability of many Maori to be self-determining, providing much needed capital for social, economic and cultural development, as well as recognizing the special status of Maori in New Zealand. One of the largest settlements to date was that with the Ngai Tahu, the major tribe of the South Island of New Zealand, which had increased its assets from 170 million dollars to 270 million through business ventures in property, fisheries and tourism.

29. Particular attention should be drawn to the development of Maori universities. There were currently three universities in the public sector, all established as tertiary educational institutions offering advanced study and research programmes within which Maori traditions and customs formed an integral part of the programme. They were significantly increasing the

participation of Maori in, and the range of qualifications on offer at, tertiary institutions. There had been exceptional increases in enrolment over the past few years, from 1,883 in 1999 to 11,281 in 2001. The Government had set aside capacity building funds to assist Maori organizations and communities in building the strategies and systems needed to enable them to control their own development and achieve their own objectives.

30. In response to Mr. Scheinin's question whether the Committee's views had been taken into account in the allocation of fisheries' assets, he said that the Waitangi Fisheries Commission was still working on a scheme for the allocation of the fisheries' settlement assets. One matter that the Government would take into account in reviewing the Commission's proposals was the Human Rights Committee's finding stressing the importance of consultation and sustainability in Maori fishing activities.

31. Ms. GWYN (New Zealand) said that Mr. Solari Yrigoyen and Mr. Ando had requested additional information on the Domestic Violence Act 1995. That Act had now been in force for five years. The definition of violence used in the Act closely resembled that in the Convention on the Elimination of Violence against Women. Its broad approach incorporated physical, sexual and psychological abuse, including intimidation, harassment and threats, and prohibitions against sibling and parental violence. Mr. Solari Yrigoyen had asked whether there were any statistics showing that the new legislation was more effective than the earlier Act. It was difficult to base an analysis of the effectiveness of legislation on statistics, since these could be interpreted in different ways. Such studies as had been carried out showed that there was a high degree of support for the legislation. Programmes were being evaluated to determine their effectiveness in meeting the objectives of the Act. Any issues raised in the process of evaluation that suggested a need to amend policies and practice would be addressed by the Ministry of Justice and the Department for the Courts by June 2003.

32. Mr. Ando had asked whether there was a mandatory reporting system for domestic violence against children in particular. Although no such system was in place so far, specific practical initiatives for dealing with family violence were under way, including its selection as a key priority area in the crime reduction strategy currently being developed by the Ministry of Justice. A second initiative was that in the Ministry of Health, where a child abuse unit had been established that would focus on a project to improve the health sector's response to the victims of domestic violence. The New Zealand Medical Association and New Zealand Nurses Association were in the process of formulating a family violence policy in terms of the role of health professionals in support of women victims. A third initiative was the "Te Tiro: New Zealand Family Violence Prevention Strategy" adopted by the Ministry of Social Policy in March 2002. The goal of that five-year programme was to bring about an attitudinal change, encouraging intolerance of violence and an increased understanding of its dimensions in society and the importance of helping to combat it. The strategy was aimed at bringing about an effective and coordinated response to violence in families through improved education and support and early identification of problems. It would also seek to ensure that the approaches adopted were culturally relevant and appropriate to the various ethnic groups.

33. Responding to the questions asked by Ms. Chanet regarding the crimes for which a sentence of preventive detention might be imposed, she drew attention to paragraphs 108-122 of

the report (CCPR/C/NZL/2001/4), which indicated that a number of safeguards were in place with regard to the use of preventive detention. First, even if the court determined that the particular factors contained in the legislation had been satisfied, the court still had discretion over whether to impose a sentence of preventive detention. The court had to consider whether the protective purpose of preventive detention could reasonably be met by a finite sentence of imprisonment. Secondly, as indicated in paragraph 108 of the report, a sentence of preventive detention could be imposed only after a person had been tried in the usual way, and convicted. During the trial, the person was presumed innocent and had all the usual means of challenging the prosecution's case. Furthermore, a sentence of preventive detention could be appealed to the Court of Appeal in the same way as any other sentence. Additionally, there was an annual review of the sentence of preventive detention for any individual by the parole board, once that individual became eligible for consideration for parole. Finally, paragraph 41 of the list of issues dealt with the question of whether preventive detention was consistent with articles 9 and 14 of the Covenant. The provision had been considered by the Solicitor-General in respect of compliance with the BORA. In October 2001, the Solicitor-General had reported to the Attorney-General that, in his opinion, the preventive detention regime in the draft bill complied with the bill of rights. The Solicitor-General had then noted the Committee's comments on preventive detention, in terms of articles 9 and 14 of the Covenant, and stated that, in his view, those articles did not raise any additional considerations other than those discussed in respect of the BORA rights, and that in terms of article 9 (4) there appeared to be nothing to suggest that the arrangements in the Bill were not satisfactory.

34. Responding to a question by Mr. Ando concerning New Zealand's reservation to article 10 on the mixing of juveniles and adults in prisons, dealt with in paragraph 139 of the report, she said that officials had reported back to Cabinet in November 2001, and that New Zealand was still considering the possibility of lifting or amending its reservation in respect of the Covenant and the Convention on the Rights of the Child.

35. Responding to a question by Mr. Bhagwati on whether there was a mechanism to monitor the protection of human rights in prisons managed by private companies, she said that such companies were responsible to the Department of Correction, and that Department was required to meet all standards imposed in respect of human rights, as were other government agencies. The Department of Correction monitored the private companies concerned to ensure that they met all human rights standards.

36. Responding to a question raised by Mr. Klein on why permanent residents and New Zealand citizens who were not New Zealand passport-holders required a returning resident's visa when they re-entered New Zealand, she said that those visas were required by permanent residents who might temporarily leave New Zealand and by those New Zealand citizens who might choose to enter New Zealand using the passport of another country. With regard to permanent residents, a permit for permanent residence expired on exit from New Zealand unless a returning resident's visa was obtained. Such a visa distinguished permanent residents from other types of visitors to New Zealand. New Zealand citizens were required to present a New Zealand passport or certificate of identity upon arrival in New Zealand. If they chose to enter New Zealand using the passport of another country, they would be considered a citizen of that country and would need to seek an appropriate permit for entry in the same way as any other visitor from that country. Such New Zealand citizens might

obtain a returning resident's visa in their alternative passport. It would be difficult for an immigration officer at the border to determine whether or not someone was a New Zealand citizen unless that person presented a New Zealand passport or certificate of identity.

37. Responding to Mr. Henkin's question whether New Zealand was a party to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, and what ongoing responsibility the New Zealand Government took for children adopted out of New Zealand, she said that New Zealand had acceded to that Convention in September 1998, and the Convention was contained as a schedule to the Adoption (Intercountry) Act 1997. Background information on intercountry adoption could be found in New Zealand's first and second reports to the Committee on the Rights of the Child. The safeguards of the Adoption Act applied in all cases of adoption arranged in New Zealand.

38. In relation to adoption to a State that was a party to the Convention, there would be dialogue and agreement between the New Zealand control authority and the designated overseas control authority, before the adoption could proceed. An application for adoption in an overseas court relating to a New Zealand citizen could not proceed unless there was valid consent from the parent or legal guardian of the child, given after the birth of the child and conforming to the legal time frame that identified the minimum period following confinement. Any overseas court, whether or not in a State party to the Convention, that had received an application for an adoption order relating to a New Zealand citizen had to make contact with the New Zealand Department of Child, Youth and Family for a child study report, which would provide background on the child's circumstances and would confirm whether it was appropriate to consider intercountry adoption. If the adoption application was lodged in a New Zealand court, then the adoptive parents from overseas would be expected to appear in that court. The Department of Child, Youth and Family would request a home study assessment report from the overseas applicants, to be provided by a government agency or an agency accredited to facilitate intercountry adoptions in the applicants' country of residence. In addition, the Department would expect to receive post-placement reports on the progress of the adoption placement from the overseas authority responsible for the adoption. The Department would expect the overseas authority to take responsibility for retaining all the background identifying information relating to the child so that the information would be available to the child when he or she reached the age of entitlement. The consent of the chief executive of the Department was required for an intercountry adoption of a child in State care. In such relatively rare circumstances, it would be expected that the adoptive applicants would travel to New Zealand to collect the child. The adoptive parents were required to adopt the child assigned to them rather than select another child. A child adopted by an overseas citizen would not lose New Zealand citizenship. Retaining New Zealand citizenship would, however, depend upon the circumstances in the adoptive country regarding the recognition of dual citizenship.

39. Ms. GEELS (New Zealand), responding to a question by Mr. Henkin on whether New Zealand took responsibility in cases of failure by other States parties to fulfil their obligations under the Covenant, said that New Zealand had made the declaration under article 41 of the Covenant recognizing the competence of the Committee to receive and consider communications from another State party that had also made the declaration. To date, neither New Zealand nor any other State had lodged any submissions with the Committee under that provision. A focus on human rights was, however, an integral part of New Zealand's foreign

policy and was reflected in a range of multilateral, regional and bilateral activities. New Zealand worked actively and constructively in multilateral forums to encourage adherence to international human rights standards, including in the Commission on Human Rights and the Third Committee of the General Assembly, supporting thematic resolutions dealing with such matters as the abolition of the death penalty and resolutions on country situations of concern. New Zealand also raised concerns regarding violations of the Covenant and the other human rights instruments on a bilateral basis. Through an aid programme, New Zealand sought to provide practical capacity-building assistance in promoting better observance of international human rights standards, focusing on the Asia-Pacific region.

40. Mr. CAUGHLEY (New Zealand), responding to a question by Mr. Ando on submissions received for the fourth report and the extent to which those submissions had been incorporated, said that five submissions had been received: two from NGOs, one from an academic, one from a private individual, and one from a member of Parliament. Many of the suggestions made by some of the correspondents had been reflected in relatively minor changes to the draft report. Some suggestions had not been considered appropriate or well-founded and had not been incorporated. The respondents had all been advised of the outcome of their submissions and the reasons for the various responses to them.

41. Ms. BUTLER (New Zealand), responding to Mr. Ando's question regarding paragraph 16 of the report, said that section 25 (b) of the BORA provided for the right to be tried without undue delay, where the delay occurred after the charge had been made. The court also had an inherent common-law jurisdiction to discharge a defendant where there had been an abuse of process. Section 347 of the Crimes Act 1961 contained a similar power to that available in common law. Both those powers were broader than BORA section 25 (b), as they applied to delay at any stage, including a delay in laying charges against a defendant. Section 347 of the Crimes Act conferred on the courts the broad discretion to discharge an accused. Such a discharge had the effect of an acquittal. The courts had developed criteria, to which the court must have regard in exercising that discretion, covering a large number of cases, for example involving allegations of unconscientious conduct by the prosecution. In such cases, there was to some extent an overlap with the inherent common-law jurisdiction of the court to prevent an abuse of its processes. The main difference between the court's inherent common-law jurisdiction and its discretion under section 347 was the right of appeal in relation to the former. To some extent, delay in bringing a defendant to trial was merely a particular instance of the general rule against unconscientious or unfair conduct by the prosecution. It had, however, generated a significant body of case law, in which delay was considered as a special ground for termination or a stay of proceedings. Mere delay in the commencement of the proceedings was not in itself sufficient to warrant the granting of a discharge under the inherent jurisdiction of the court. It must be shown that the delay had caused the trial to be unfair to the defendant. Unlike delay under BORA section 25 (b), it seemed irrelevant whether the delay was caused by a delay in the victim reporting the offence or by dilatory conduct by the prosecution. The critical point was whether the defendant had been prejudiced in the preparation of his or her defence by the lapse of time.

42. Mr. CAUGHLEY (New Zealand), responding to the question by Mr. Scheinin on whether the New Zealand Government had taken a position in relation to future requests for interim measures of protection from any United Nations treaty body in individual cases, said that

New Zealand's experience of individual communications under the first Optional Protocol to the Covenant had not so far included any recommendation or request from the Committee as to the application of interim measures under rule 86 of the Committee's rules of procedure. New Zealand was not necessarily averse to interim protection measures, but the Government did not feel able to take a position in advance of the details of a particular case. Each case would need to be assessed specifically.

43. In response to the question by Mr. Solari Yrigoyen about compulsory military service and conscientious objectors, he said that there was no compulsory military training in New Zealand.

44. Mr. LALLAH said that, as observed by Mr. Klein, paragraph 46 of the report indicated that Parliament had reserved the right to derogate from the Covenant, beyond the reservations made by New Zealand to the Covenant. Similarly, paragraph 65 of the report indicated that all regulations made after 1 January 2000 were consistent with the Human Rights Act "unless any inconsistency is specifically authorized in an Act of Parliament". An example of the implications of such a right was given in paragraph 63 of the report, which dealt with an exemption, now happily expired, permitting a violation of the Covenant. If Parliament itself legislated in breach of the Covenant, and the courts were bound by the Act of Parliament, then there would be no remedy under article 2 of the Covenant. Nevertheless, the Covenant could not be denounced. He encouraged the Government of New Zealand to pursue its constitutional reform, with a view to entrenching human rights in a hierarchy which would enable the courts to monitor and sanction violations.

45. Mr. SCHEININ requested clarification of the reply concerning application of the Immigration Act with regard to the deportation of a terrorist. In particular, he asked whether the risk of torture constituted grounds for an exception.

46. Ms. CHANET, clarifying her previous question, asked whether preventive detention was compatible with article 15 of the Covenant.

47. Mr. ANDO asked whether there was any time limit on detention prior to a charge being brought, other than that relating to the criterion of unfairness.

48. Mr. HENKIN said he understood that New Zealand had made the declaration under article 41 of the Covenant, but that no communications had been made by or concerning New Zealand under that article. Article 41 was perhaps a last resort, but there were other possible approaches that would reflect the nature of the Covenant as a treaty among parties rather than a relationship between one country and others. He asked whether or not the New Zealand Government had considered or was considering activities short of article 41, or indeed under article 41, in relation to violations by other countries.

49. Mr. CAUGHLEY (New Zealand) said that the delegation lacked the expertise to provide adequate answers to the questions posed by Mr. Scheinin, Ms. Chanet and Mr. Ando. He undertook to try to obtain the requested information. With regard to Mr. Henkin's question, he said that one of the activities was to make bilateral representations on human rights abuses, and

the New Zealand Government had done so assiduously during Prime Ministerial and ministerial visits to other countries. Other activities concerned concerted efforts of the international community, through so-called "smart sanctions".

50. Ms. BUTLER (New Zealand), replying to Mr. Lallah, said that constitutional debate continued in New Zealand. If Parliament legislated in breach of the Covenant, New Zealanders had the remedy provided by the Optional Protocol: every New Zealander could lodge a complaint with the Human Rights Committee.

51. Mr. YALDEN asked how many complaints had been made to the Committee since New Zealand had become a party to the first Optional Protocol.

52. Ms. BUTLER (New Zealand) replied that, to date, there had been 15 such complaints in all, with a definite increase in the past two years.

53. Ms. MEDINA QUIROGA asked whether New Zealand regarded the Committee's views on communications as binding.

54. Ms. BUTLER (New Zealand) answered that the Government would give due consideration to the Committee's decisions, but so far the Committee had always found that New Zealand had acted in compliance with the Covenant.

55. The CHAIRPERSON thanked the New Zealand delegation for the instructive debate and its excellent presentation, which had contained a wealth of detailed, comprehensive information. Its report was worthy of emulation by other States parties, because it had dealt squarely with the issues raised by the Committee in its concluding observations on the third periodic report. He greatly appreciated the considerable progress made in New Zealand towards the full realization of human rights and the Government's commitment to attaining the highest standards in the achievement of those rights. He welcomed the news that the judiciary in New Zealand referred to the Committee's general comments in its judgements and that the Government's exemption, mentioned in paragraph 63 of the report, was coming to an end, which signified that, as from 1 January 2002, the Government would be subject to the discipline of human rights. He had been delighted to hear of New Zealand's good regulatory framework for intercountry adoption and of the major programmes to curb family violence, which were being initiated following the adoption of the Domestic Violence Act.

56. The debate had allayed some worries but disclosed some remaining causes for concern. In his opinion, the continued practice of preventive detention flew in the face of modern theories and principles of criminal jurisprudence, and violated article 15 of the Covenant. Secondly, the privatization of prisons was likely to encourage infringements of prisoners' rights, as private companies might not be subject to the discipline of human rights or might not be accountable in the same way as public authorities. Moreover, ILO had frequently expressed its disapproval of that practice.

57. Several Committee members had voiced their dismay that language had not been made a prohibited ground of discrimination. He disagreed with the proposition that the ground of race would cover language discrimination as well. Communities within the same racial group could speak different languages.

58. Similarly, a number of Committee members had spoken of their concern that the BORA did not enjoy a status higher than that of ordinary legislation and that, if a conflict between the Act and ordinary legislation could not be resolved through interpretative ingenuity, the legislation in question would take priority over the Act. While the judiciary had established certain principles and the courts could issue a declaration of inconsistency, it would be better if the BORA were given precedence over other legislation.

59. It had been most heartening to learn that the judiciary in New Zealand had adopted a proactive role by interpreting domestic legislation in the light of international human rights norms and that it had built up substantial human rights jurisprudence. Lastly, he commended the steps taken by the Government to preserve the Maori language and culture.

60. Mr. CAUGHLEY (New Zealand) said that the proceedings of the past two days would lend added focus to the Government's endeavours to comply with the letter of human rights law. His Government likewise attached great importance to upholding the spirit of the Covenant, as had been evidenced by the apologies it had made for discriminatory practices in the past against Chinese settlers and for injustices arising from New Zealand's administration of Samoa during the early years of the previous century. His delegation regarded feedback from the Committee as invaluable for the progressive implementation of the letter and spirit of the Covenant

61. The New Zealand delegation withdrew.

The public part of the meeting rose at 12.30 p.m.