



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

Fifty-second session

SUMMARY RECORD OF THE 1380th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 November 1994, at 10 a.m.

Chairman: Mr. ANDO

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

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

General comment on issues relating to reservations (CCPR/C/52/CRP.1/Rev.1)

1. The CHAIRMAN invited the Committee to consider paragraph by paragraph the third draft of a general comment on issues relating to reservations (CCPR/C/52/CRP.1/Rev.1), which had been revised by Mrs. Higgins in the light of discussion.

Paragraph 1

2. Mrs. HIGGINS said that in drafting the revised text she had endeavoured to take into account all comments and proposals made by other Committee members. The headings that appeared in capital letters and between square brackets had been added to facilitate the Committee's work and would not appear in the final version of the document.

3. Mr. Wennergren had proposed amendments to paragraph 1, which she had accepted. In the fifth sentence, the phrase "full implementation" should be amended to read "effective implementation". In the same sentence, the words "weaken the obligations" should be replaced by "weaken respect for the obligations". The end of the penultimate sentence should be amended to read: "... must know whether a State is bound by a particular obligation and to what extent". The last sentence should be expanded to read: "... or an interpretative declaration and a determination of its acceptability and effect".

4. Mr. BRUNI CELLI recalled that he had drawn Mrs. Higgins's attention to a matter that ought perhaps to be taken into consideration in a general comment on reservations. The Covenant was silent on the matter of denunciation, which could perhaps be interpreted as an oversight or - more likely - as the express intention of its framers. The matter of denunciation, insofar as it might have any bearing on the question of reservations, which remained to be seen, could have an effect on the Committee's position with respect to reservations, and he wondered whether the Committee ought not to state its views on the matter.

5. Mrs. HIGGINS said that she had indeed given the matter raised by Mr. Bruni Celli due consideration but had refrained from mentioning it because the legal effects of the absence of any reference to denunciation in the Covenant were not clear. The matter raised far-reaching theoretical problems that were beyond the Committee's sphere of competence.

6. Mr. WENNERGREN recalled that the Vienna Convention on the Law of Treaties contained a paragraph on denunciation, which was a totally separate question from that of reservations. It was an area into which the Committee should not venture.

7. The CHAIRMAN agreed that the problem was too far-reaching and complex for the Committee to address at present. If it was acceptable to Mr. Bruni Celli, the matter would not be taken up during the current meeting.

8. It was so decided.

9. Ms. EVATT, noting the reference to article 41 of the Covenant in the title of the draft general comment, requested its deletion.
10. It was so decided.
11. Mrs. CHANET said that she was quite satisfied with the revised text, which represented an enormous and extremely difficult effort. It seemed to her that the text could be further improved by shortening it and removing portions that might be too “academic”.
12. With regard to paragraph 1, she thought first of all that there was no need to provide figures, for the fact that 46 States had made reservations was in itself of no significance: some reservations might not adversely affect the Covenant, whereas a single reservation could invalidate its purpose. The most important information was contained in the second sentence.
13. Mr. POCAR thanked Mrs. Higgins for her excellent work. In the first sentence, it would be preferable to give a specific date rather than merely indicating “as of November 1994”. In the same line, it would be better to delete the phrase “ratifying parties” and simply to say “46 of the States parties to the Covenant”. In the penultimate sentence it would be preferable to mention only one Optional Protocol, since the two elements in the clause set off in commas (article 40 of the Covenant and the Optional Protocols) did not deal with the same matter. Article 40 and the first Optional Protocol concerned the Committee’s duties, whereas the Second Optional Protocol contained substantive provisions but did not deal with procedure. Accordingly, one could say either “under the Covenant and the Optional Protocols” or “under article 40 of the Covenant and the Optional Protocol”.
14. Mr. BÁN expressed his gratitude to Mrs. Higgins, who had improved on the Working Group’s text considerably. In the fourth sentence of paragraph 1, it would be better to refer to the “competence” of the Committee rather than to its “powers”.
15. Ms. EVATT said that the draft general comment was very close to being a final version. She endorsed the amendments proposed by Mr. Bán and Mr. Pocar. However, she considered it very important to mention the number of States parties that had formulated reservations as well as the number of such reservations in order to make the magnitude of the problem immediately obvious.
16. Mr. FRANCIS thanked Mrs. Higgins for her text, to which he had no objection. In response to Mr. Pocar, whose viewpoint he understood, he said that the reference to the Optional Protocols could be retained since, as was indicated later in the text, the Second Optional Protocol could be the subject of particular reservations.
17. Mrs. HIGGINS said that she had listened carefully to the comments made by other Committee members. Replying first of all to Mrs. Chanet, she said that although the text seemed long, it was by no means wordy. As for the terminology used, it must be understood that the text would be read by legal experts; the Committee must therefore foresee possible criticisms and prove that it was well versed in the law relating to such matters. In shortening the text there was a risk that some points might be lost.

18. She could agree to all the amendments proposed thus far with the exception of two, which she would like the Committee to discuss further. The first was Mr. Pocar's request that mention should be made of the first Optional Protocol only and not of both. The Committee also had obligations under the Second Optional Protocol, and provision must be made for all eventualities.

19. The second proposal she could not support was the deletion of the number of States that had formulated reservations and the number of reservations. The nature of the reservations was a matter of crucial importance, but the very fact that such a large number had been made was also very important, because a considerably higher number of reservations had been made to human rights treaties than to any other treaties.

20. Mr. POCAR said that he had not meant to imply that the Committee had no obligations under the Second Optional Protocol. The penultimate sentence of paragraph 1 dealt exclusively with procedure, whereas only the first Optional Protocol contained provisions concerning the Committee's duties. Nevertheless, he would not press for the adoption of his proposal.

21. Mr. DIMITRIJEVIC said that he thought it would be wiser to mention both Optional Protocols, even though the only issue at stake was procedure.

22. As to the figures, it would be preferable to retain them, since the very fact that there were so many reservations spoke for itself. However, Mrs. Chanet was justified in arguing that not all reservations were of equal importance, a concern that could easily be taken into account by inserting the words "of varying significance" after the words "had, between them, entered 150 reservations".

23. It was so decided.

24. Mr. EL-SHAFEI insisted that since the Second Optional Protocol was a completely separate document from the first Optional Protocol and the Covenant, the Committee must make sure that all the comments it made on the subject of reservations applied also to that Protocol.

25. Mrs. HIGGINS pointed out that the question of possible reservations to the Second Optional Protocol had been specifically addressed in the draft general comment. In any event, a consensus seemed to be emerging in favour of retaining the reference to the Optional Protocols in the plural, and Mr. Pocar seemed willing to go along with the consensus.

26. The expression "Optional Protocols" was retained in the plural.

27. Mr. PRADO VALLEJO drew attention to the phrase "the continued paramountcy of certain domestic legal provisions" in the third sentence and asked what was meant by the word "continued".

28. He also thought that the last sentence should be clearer and should therefore read: "This will require a determination as to whether a unilateral statement is a reservation or an interpretative declaration."

29. Mrs. HIGGINS said that she had felt it necessary to say “continued” because some countries in which domestic law was paramount attached importance to its continued paramountcy following their ratification of the Covenant. Mr. Prado Vallejo’s second proposal concerning the last sentence improved the text and should be retained.

30. She read out paragraph 1 as it would be redrafted to reflect all the amendments adopted during the current meeting.

31. The CHAIRMAN said that the secretariat would correct all the typographical errors in the different language versions of the text. If he heard no objection, he would take it that the Committee wished to adopt paragraph 1, as orally amended.

32. It was so decided.

Paragraph 2

33. Mrs. CHANET observed that the word “role” in the expression “role of States parties” and “role of the Committee” was somewhat vague in French and should be replaced by a more specific term. Aside from that minor point, she had difficulty with a much more important point, namely the reference to issues of policy in the first sentence. First, the idea was neither clarified nor taken up elsewhere in the draft text. Furthermore, there was a paradox: in its general comments, the Committee was supposed to refer to issues of international law and policy, whereas the States parties were to bear in mind only “legal considerations”, as noted in the last sentence of the paragraph, when entering reservations. She suggested that the reference to “issues of policy” in the first sentence should be deleted, and that the last sentence should be redrafted to indicate that States should be aware of all the considerations to be borne in mind, without specifying which ones. Another solution would be to retain the reference to issues of policy in the first sentence and to include it in the last sentence, too, but to qualify those issues in both cases, perhaps by referring to “issues of human rights policy”.

34. Ms. EVATT said it was important to mention issues of policy in the paragraph, in particular because when a State considered becoming a party to the Covenant, it had to take into account both legal and policy considerations. The intent of paragraph 2 was to explain clearly to States what the legal effects of their accession to the Covenant were. In her opinion, the Committee was going much further: it was trying to influence the policy decisions of States by referring to considerations of international law and by showing what the legal effects of the decisions taken would be. That was why there was a reference to issues of policy in the paragraph. In the light of the foregoing, she suggested that the last sentence should say that States must also bear in mind considerations other than legal ones if they were considering formulating reservations when acceding to the Covenant.

35. Mr. WENNERGREN proposed that the words “and their purport to be interpreted” should be added at the end of the second sentence, given that each time a State party entered a reservation, the Committee was obliged to interpret it.

36. Mr. POCAR proposed that mention should be made in the last sentence of the two procedures of ratification of and accession to the Covenant.

37. Mr. BÁN endorsed Mr. Wennergren's proposal concerning the second sentence. He was also in favour of retaining the reference to issues of policy. However, in order to avoid any misunderstanding as to the Committee's intentions, some wording should be found to indicate that in its general comments the Committee intended to state its views on issues other than those strictly relating to implementation of the Covenant.

38. Mr. PRADO VALLEJO said that he would prefer to mention only issues of international law in the first sentence and to delete the reference to issues of policy. In the second sentence, he suggested that the words "and by reference to which their acceptability is to be tested" should be replaced by "and that could have an impact on their acceptability" (admissibility). Lastly, the word "*función*" in the third and fourth sentences of the Spanish version was not clear, like the word "*rôle*" in the French text, if he had understood correctly. In his view, it would be better to use the word "*papel*" in Spanish, which was an exact translation of the English word "role" used in the English version.

39. Mrs. HIGGINS explained that she had mentioned issues of policy in paragraph 2 because, in her opinion, policy considerations did come into play when States were deciding whether or not to formulate reservations. That being said, if the Committee decided to retain the reference in the first sentence, it should also include it in the last sentence of the paragraph.

40. As to Mr. Prado Vallejo's suggestion concerning the second sentence, she would prefer to keep the text as it stood, subject to the addition of the words proposed by Mr. Wennergren: one of the Committee's tasks was to determine the acceptability of reservations in accordance with specific norms that the text of the general comment aimed to define.

41. Mr. EL-SHAFEI said that paragraph 2 would be more convincing if the reference to issues of policy was deleted, thus mentioning only issues of international law. The Committee was in fact relying on points of law to caution States that wished to make reservations. Furthermore, he wondered whether it was really wise to refer to issues of policy when that was one area in which States were sovereign. He observed that the English word "policy" did not have quite the same meaning as the French word "*politique*".

42. Mr. BRUNI CELLI agreed with Mr. El-Shafei concerning the difference in meaning between "policy" and "*politique*". The English word had a more practical connotation than its French equivalent. Perhaps the word "policy" should be retained in the English version and its translation reviewed in the French and Spanish versions.

43. Mrs. HIGGINS suggested that the Committee should defer a decision on the reference to issues of policy and agree in the meantime to wording in square brackets. The text of paragraph 2 as a whole might be reworded to read:

"For these reasons the Committee has deemed it useful to address in a general comment the issues of international law [and human rights policy] that arise. The general comment identifies the principles of international law that apply to the making of reservations and by reference to which their acceptability is to be tested and their purport to be interpreted. It addresses the role of States parties in relation to the reservations of others. It further addresses the role of the Committee itself in relation to reservations.

And it makes certain recommendations to present States parties for a reviewing of reservations and to those States that are not yet parties about legal and human rights policy considerations to be borne in mind should they consider ratifying or acceding with particular reservations.”

44. The CHAIRMAN said he would take it that the Committee wished to adopt paragraph 2, as amended by Mrs. Higgins, on the understanding that a decision would be taken at a later date on the words placed in square brackets and that the translation of the word “policy” in the French and Spanish versions of the paragraph would be reviewed.

45. It was so decided.

Paragraph 3

46. Paragraph 3 was adopted.

Paragraph 4

47. Mrs. HIGGINS said that Mr. Wennergren had proposed the addition of the phrase “undergoing a transitional period” after the word “States”, in the third sentence. She was opposed to that proposal, and recalled that the Committee had already discussed the question of the role of reservations at length. She sincerely hoped that the Committee would not reopen the debate on the matter: it had concluded very clearly that any State, irrespective of its status, that chose to enter reservations must endeavour to bring its legislation into line with the provisions of the Covenant as swiftly as possible.

48. Mrs. CHANET said that she was not in favour of Mr. Wennergren’s proposal either. In addition, she requested the deletion of the expression “are not maximalist aspirations” in the second sentence.

49. Mr. BÁN shared Mrs. Higgins’ view. He, too, felt that Mr. Wennergren’s proposal was not in line with the Committee’s earlier decision, particularly in the light of the statement made in paragraph 22 of the draft general comment. He also agreed with Mrs. Chanet concerning the words “maximalist aspirations”.

50. Mr. BRUNICELLI suggested that the expression “States which have difficulties” in the first sentence should be replaced by the phrase “States which consider that they have difficulties”, because, in his view, it was States that sometimes considered subjectively that they had difficulties in guaranteeing the rights enshrined in the Covenant.

51. Mr. WENNERGREN drew attention to the first sentence of the paragraph and said that it was not reservations per se that might encourage States having difficulties “nonetheless to accept the generality of obligations in the Covenant”, but rather “the possibility of making” such reservations, and he would like the first sentence to be amended accordingly.

52. Mr. POCAR proposed that the order of the second and third sentences should be reversed to make the text more balanced and logical. It would then be clearer to States parties that what was important was that they should accept the full range of obligations under the Covenant.

53. Paragraph 4, as orally amended, was adopted.

Paragraph 5

54. Paragraph 5 was adopted.

Paragraph 6

55. Mr. BRUNI CELLI said that the word “necessarily” in the first sentence was superfluous.

56. Mrs. CHANET asked whether footnote 1 would be retained in the final version, which would be her preference.

57. Mr. PRADO VALLEJO said that the last sentence did not make much sense, at least not in the Spanish version.

58. Mrs. HIGGINS proposed that the end of the last sentence, which was not altogether satisfactory in English either, should be reworded to read: “the test governs the matter of reservations”. She also confirmed that the footnote would be retained in the final version of the text since it was important.

59. Paragraph 6, as revised by Mrs. Higgins and amended by Mr. Bruni Celli, was adopted.

Mr. Wennergren’s proposal for a new paragraph 6.2

60. The CHAIRMAN said that Mr. Wennergren had proposed the inclusion of a new paragraph 6.2, which would read:

“The implementation of the articles of the Covenant often implies an element of interpretation. The same may be said about the implementation of reservations. The Committee recalls the general rule of interpretation that exists in article 31 of the Vienna Convention on the Law of Treaties. It states that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. A reservation accordingly shall be understood and interpreted in its context and in the light not only of its own object and purpose, but also of the object and purpose of the Covenant and its reserved article. A reservation therefore has to be submitted to an object and purpose test by two stages, of which the latter might also include considerations under article 19, paragraph 3, of the Vienna Convention on the Law of Treaties with regard to its acceptability. The issue of the object and purpose thus plays a salient role for a reservation. Due attention shall therefore be given to it.”

61. Ms. EVATT said that she would retain only the sentence which read: “A reservation accordingly shall be understood ... and its reserved article.”

62. Mr. WENNERGREN said that the aim of his proposal was to underline the relationship between article 19, paragraph 3, and article 31 of the Vienna Convention.

63. Mr. BÁN said that he was in favour of that idea.

64. Mrs. HIGGINS said she thought that the result would be the same if the end of paragraph 6 of her revised draft was reworded to read: “that test governs the matter of interpretation and acceptability of reservations”.
65. Mrs. CHANET said she thought that the reference to article 19, paragraph 3, and article 31 of the Vienna Convention that already appeared in paragraph 6, which had just been adopted, would suffice and that the reader should not be overwhelmed. The Committee should adhere to Mrs. Higgins’s revised text.
66. Mr. DIMITRIJEVIC said that he was of the same opinion and cautioned against trying to say too much and overloading the text.
67. Mr. PRADO VALLEJO said he feared that a text that said too much would throw States parties into a panic, and that they might then formulate a host of reservations or refuse to ratify the Covenant.
68. The CHAIRMAN said he took it that the Committee did not wish to adopt Mr. Wennergren’s proposal.

Paragraphs 7, 8 and 9

69. The CHAIRMAN invited the members of the Committee to consider paragraphs 7, 8 and 9 together, since they dealt with the same subject, and noted that Mr. Wennergren had submitted an amended version of paragraph 7, which read:
- “7. The preamble to the Covenant provides useful guidance with regard to the definition of the object and purpose of the Covenant and each one of its articles when it refers to ‘the inherent dignity ... and freedom from fear and want’. The terms of the particular articles of the Covenant also often contribute to an enlightened understanding of the object and purpose of the article. This is also often the case with the terms of a reservation read in the context of the reserved article.”
70. Mrs. HIGGINS pointed out that paragraph 7 as contained in her revised text had been drafted following Mr. Wennergren’s instructions very closely. Now he was submitting a proposal for a new text. She failed to see where Mr. Wennergren’s amendment, which seemed repetitive to her, could be inserted, and she preferred the wording of her revised text. She then drew attention to a typing error in the English version of the last sentence in the paragraph: the last word should read “want” and not “war”.
71. Mr. DIMITRIJEVIC said that he thought paragraphs 7, 8 and 9 were too brief and that there was no real logical connection between them. He had reservations regarding paragraph 8, which seemed to suggest that there was a hierarchy or rank among the various rights. He also wondered whether paragraph 7 was really necessary.
72. Mrs. HIGGINS argued in favour of paragraph 8, which she had reinserted into the revised text of the general comment even though the Working Group had deleted it. She wished to explain her reasons for doing so. When working on the general comment, she had been struck by the fact that it would be extremely easy to say, for example, in the case of the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Convention on the Elimination of All Forms of Discrimination against Women, that a reservation referring to a particular provision would be fatal for the instrument in its entirety. On the other hand, in an instrument like the Covenant, which embraced virtually the full range of civil and political rights, that was not possible. The question must be approached differently, which was what she was trying to do in the draft general comment she was submitting. If a paragraph needed to be deleted, she would choose paragraph 7, but she would retain paragraph 8.

73. Mrs. CHANET said that she shared Mr. Dimitrijevic's doubts concerning paragraphs 7, 8 and 9. In her view, paragraph 7 did not add much as currently placed in the text, and she suggested that it should be kept in mind for future use should it prove to have value as an illustration.

74. She would like to see paragraph 8 deleted, for three reasons. First, she did not believe that the Committee should offer so many explanations, explaining the approach it was following in the general comment and replying in advance to possible criticisms or questions, particularly since it risked providing incomplete or problematic answers. Secondly, like Mr. Dimitrijevic, she did not think it was necessary to refer to rights that were "at the apex of the treaty" and that the Committee must refrain from any suggestion of a hierarchy. Thirdly, although the last sentence was skilfully drafted and conveyed the spirit of the Covenant, it did not provide any clues to understanding reservations. In other words, after having explained that in a single-topic convention it was far easier to determine which reservations were contrary to the object and purpose of the treaty, the paragraph went on to say that it was more difficult to do so in an instrument like the Covenant, without explaining how that could in fact be done. The procedures to be followed would be set out later, which was risky because, if it was so difficult to determine what reservations were contrary to the object and purpose of a treaty, States might feel encouraged to make fairly subtle reservations so that the Committee would have difficulty in recognizing them.

75. Ms. EVATT, commenting on paragraphs 7 and 8, began with the latter, which simply expressed the idea that, contrary to single-topic conventions, the Covenant was an instrument whose various provisions could not be considered separately. In other words, each article was intended to achieve the objectives of the Covenant. That idea strengthened the "message" that any reservation made a hole in that pattern of closely interrelated rights. As the idea conveyed in paragraph 8 was very important, that paragraph ought to precede paragraph 7.

76. Paragraph 7 should be made stronger by means of an amendment that would read: "In determining whether a clause may, by reference to the object and purpose test, be made the object of a reservation, this interrelationship needs to be considered." One could then continue by saying that the preamble to the Covenant strengthened that idea, given that it referred to the "inherent dignity of the human person". In summary, she approved the ideas expressed in both paragraphs but would reverse their order, with the amendments she had indicated.

77. Mr. DIMITRIJEVIC said that he did not object to the text of paragraph 8, the final sentence of which he fully endorsed, but he did object to any mention of a hierarchy among the rights contemplated in the Covenant. By way of a solution, he proposed that the second sentence should be retained and merged with the third sentence to read: "In a complex instrument which

articulates very many civil and political rights, like the Covenant, each of the many articles, and indeed their interplay, secures the objectives of the instrument.” Paragraph 9 would follow. As for paragraph 7, he did not find it very useful because the reference to the preamble to the Covenant basically affirmed truisms and did not add very much.

78. Mrs. HIGGINS suggested that Mr. Dimitrijevic’s proposal should be incorporated into a new paragraph that would also combine paragraphs 8 and 9 of the text she had submitted. In order to facilitate a consensus, she was prepared to delete the beginning of paragraph 9 before incorporating it in the new text and to put paragraph 7 on hold. If that solution was agreeable to the members of the Committee, it might perhaps be adopted, and the Committee could move on to consideration of paragraph 10.

79. The CHAIRMAN said he took it that that proposal was acceptable to the Committee.

80. It was so decided.

The meeting rose at 1 p.m.