



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/SR.1781
5 October 1999

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1781st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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* The summary record of the second part (closed) of the meeting appears
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at this session will be consolidated in a single corrigendum, to be issued
shortly after the end of the session.

The meeting was called to order at 3.10 p.m.

ANNUAL REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL (agenda item 9) (continued) (CCPR/C/66/CRP.1/Add.2/Rev.1, Add.7 and Add.8; CCPR/C/66/CRP.2/Add.1-3,5,6 and 8-12)

1. The CHAIRPERSON invited the Committee to resume consideration of its annual report to the General Assembly.

Chapter VI (Consideration of communications under the Optional Protocol)
(CCPR/C/66/CRP.1/Add.7)

Introduction

2. Mr. AMOR, referring to paragraph 1, said that 145 States had now ratified the Covenant. The figure in the last sentence should be corrected.

3. The introduction, as amended, was adopted.

Section A (Progress of work)

4. Mr. POCAR said that a total of 823 communications had been registered at the time of adoption of the previous annual report. The current total, according to paragraph 3 of chapter VI, was 862. It followed that only 39 communications had been registered during the period covered by the report, which struck him as a very small number, particularly in the light of section B entitled "Growth of the Committee's caseload under the Optional Protocol".

5. Lord COLVILLE said that, owing to the delay in having documents translated and reproduced in all the working languages, the numbers quoted in paragraph 3 were out of date. The final total would be considerably more than 862 communications. He requested authorization to update the figures before the end of the session.

6. It was so decided.

7. Mr. SCHEININ, referring to paragraphs 6 and 7 concerning the Committee's Views and decisions and the annexes in which they were to be reproduced, said that although, pursuant to rule 85 of the Committee's rules of procedure, he had not participated in the examination of case No. 850/1999 (Hankala v. Finland), he had been recorded as having done so. He trusted that that mistake would be rectified when the annexes were published. He also noted that the non-participation of members in the proceedings pursuant to rule 85 had been recorded in three different ways in annex XI to the previous annual report and suggested that a standard form of wording should be adopted.

8. Ms. EVATT said that, according to paragraph 3, the annual report covered the period from 1 August 1998 to 30 July 1999. But the data for overdue reports in chapter III (CCPR/C/66/CRP.1/Add.3/Rev.1) were based on the situation at 1 August 1999.

9. Lord COLVILLE (Rapporteur) proposed amending the date in the title of the table concerning overdue reports in chapter III to read "30 July 1999". The number of years shown in the final column would then be reduced by one year for each State party.

10. It was so decided.

11. Section A, subject to rectification of the figures for communications, was adopted.

Section B (Growth of the Committee's caseload under the Optional Protocol)

12. Lord COLVILLE (Rapporteur) read out the following proposed new version of the second and third sentences of paragraph 12:

"That figure would be considerably higher were it not for the fact that many communications, despite having been initially screened, have not yet reached the stage of registration; it is registration that has been delayed for a considerable period, up to a year in some cases. In addition to that delay, other than in cases considered urgent, there is a growing backlog of correspondence awaiting reply which relates to matters other than cases for registration."

13. Mr. POCAR, referring to paragraph 16, proposed deleting the phrase "while fully aware of the financial crisis besetting the Organization" and amending "should be guaranteed" to read "shall be guaranteed". The financial crisis was not an acceptable excuse for depriving the Committee of the resources it needed to perform its functions.

14. Lord COLVILLE (Rapporteur) said that an identical paragraph had been published in the previous annual report.

15. Mr. AMOR said he had noticed that some activities were penalized on account of the financial crisis and others not.

16. Ms. CHANET supported Mr. Pocar's proposal. The Committee was tired of hearing the same old argument about a financial crisis when funds were readily available for other activities, such as studies.

17. Section B, as amended by the Rapporteur and Mr. Pocar, was adopted.

Section C (Approaches to examining communications under the Optional Protocol)

18. Mr. SCHEININ, referring to paragraph 17, suggested that the number of cases should be specified in which interim measures of protection pursuant to rule 86 of the rules of procedure had been requested.

19. Lord COLVILLE (Rapporteur) said he would do the requisite research and insert the appropriate figure in place of the word "other" in the penultimate sentence.

20. Section C was adopted on that understanding.

Section D (Individual opinions)

21. Section D was adopted.

Section E (Issues considered by the Committee)

22. Mr. POCAR drew attention to an inconsistency between paragraph 23 concerning volumes of selected decisions by the Committee under the Optional Protocol and chapter I, paragraph 37, of the annual report (CCPR/C/66/CRP.1/Add.1/Rev.1). The Committee expressed distress in paragraph 23 about the failure to publish volume 3 of the selected decisions and in chapter I welcomed the fact that it was to be published shortly.

23. Lord COLVILLE (Rapporteur) said that he would check what stage had been reached in the publication process and bring the wording of the two paragraphs into line with the current situation.

24. Ms. CHANET said it was deplorable that it took so long to publish volumes of decisions that had been adopted many years previously. She asked how many recent decisions were currently accessible on the Website.

25. Ms. EDELENBOS (Secretariat) said that all decisions since the forty-sixth session were now available on the Website.

26. Ms. CHANET proposed deleting the word "interpretative" in the penultimate sentence.

27. It was so decided.

28. Lord COLVILLE (Rapporteur), referring to paragraph 37, said that the paragraph had been amended to reflect the Committee's action on case No. 869/1999. The opening part would be amended to read: "In the period under review, the Committee faced a failure to comply with its request under rule 86 in two instances. (1) Cases Nos. 839/1998 ...". The following text would be added at the end of the paragraph:

"(2) Case No. 869/1999 (Piandiong et al. v. Philippines). Despite the Committee's request of 23 June 1999 to stay the execution of the authors of the communication, they were executed by the State party on 8 July 1999. The Committee wrote to the State party on 14 July 1999 demanding within one week clarifications about the circumstances surrounding the executions. On 16 July, the Permanent Mission responded that the Committee's request had been submitted to the capital for appropriate response and that, pending receipt of this response, the Chargé d'affaires in the Mission was ready to meet with the Committee or its representative. On 21 July, the Chargé d'affaires met with the Vice-Chairperson of the Committee, Ms. Evatt, and the Special Rapporteur for New Communications, Mr. Kretzmer. The Vice-Chairperson and the Special Rapporteur expressed the Committee's deep concern at the non-

compliance by the State party with the request under rule 86. The Chargé d'affaires repeated that his Government would be providing a full response."

29. Paragraph 37, as amended, was adopted.

30. Mr. KRETZMER said the Committee had decided in the two cases cited in paragraph 54 that the reclassification of an offence for a convict already subject to a death sentence was not a determination of a criminal charge within the meaning of article 14 of the Covenant. But the Committee had decided in other cases considered at the current session that, where a judge in a similar procedure had handed down a prison sentence involving a non-parole period, a hearing would be necessary. The Committee should not give the impression that it was being inconsistent.

31. Lord COLVILLE (Rapporteur) said that the text had been prepared prior to the adoption of those decisions. He would amend it in such a way as to ensure that there was no inconsistency.

32. Section E, as amended and subject to updating of the information regarding the publication of selected decisions, was adopted.

Section F (Remedies called for under the Committee's Views)

33. Section F was adopted.

34. Chapter VI, as amended and subject to updating of the figures in sections A and C and of the information regarding publication of selected decisions, was adopted.

Chapter VII (Follow-up activities under the Optional Protocol)
(CCPR/C/66/CRP.1/Add.8)

35. Lord COLVILLE (Rapporteur) read out the following text to be inserted as paragraph 10 (a) concerning two communications submitted by the Czech Republic: "The Permanent Mission of the Czech Republic requested a meeting with the Special Rapporteur on follow-up of Views. On Tuesday, 13 July, during the Committee's sixty-sixth session, Mr. Fausto Pocar met with Ambassador M. Somol and Mr. Jiri Malenowsky, Director-General at the Ministry of Foreign Affairs in Prague. Several issues were discussed, including the legal, constitutional and political problems that the State party is facing in fully implementing the Committee's Views with respect to communications Nos. 516/1992 (Simunek) and 586/1994 (Adam v. the Czech Republic)."

36. Mr. LALLAH observed that the report did not reflect the decisions taken during the current session.

37. Lord COLVILLE (Rapporteur) explained that at the time of drafting it had not been possible to take account in the document of decisions taken during the current session. The final version of the report would be updated to reflect the situation as at 30 July 1999.

38. Mr. SCHEININ, referring to paragraph 2, said that the name of the Special Rapporteur on Follow-up of Views should read "Mr. Fausto Pocar".

39. Mr. POCAR said that in the light of the addition of paragraph 10 (a), the information provided on the Czech Republic under paragraph 7 would need to be amended. The last sentence should read "Follow-up consultations were held during the sixty-first and sixty-sixth sessions (see 1998 report (A/53/40), para. 492, and para. 10 (a) below)".

40. Furthermore, he suggested that a more appropriate heading for paragraphs 9 to 15 would be "Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period".

41. Mr. LALLAH, referring to paragraph 18, sought clarification regarding the statement in the first sentence to the effect that the recommendation that at least one follow-up mission per year be budgeted by the Office of the High Commissioner for Human Rights had still not been implemented. Surely such missions ought to be budgeted by the Secretary-General of the United Nations.

42. Lord COLVILLE (Rapporteur) said that the matter would be followed up by the secretariat. He drew attention to the following text to be inserted as paragraphs 19 and 20, which reflected the current situation vis-à-vis the Optional Protocol and the Committee's discussions on ways and means of strengthening follow-up procedures:

"19. Although the Human Rights Committee is not a court, its application and interpretation of the provisions of the International Covenant on Civil and Political Rights and of the Optional Protocol thereto has yielded a body of very quotable 'case-law'. After its first 22 years of operation, the Optional Protocol procedure has shown a concrete development of juridical ideas. But further, the follow-up procedure is a major step toward monitoring and facilitating the implementation of the Committee's decisions; it may also reinforce the public's perception that the Committee's decisions may lead to concrete remedies for the violations of their human rights.

20. To strengthen further the follow-up procedure, meetings of States parties to the International Covenant on Civil and Political Rights should be held annually, to which the Special Rapporteur on Follow-up of Views would submit a report, so as to enable States parties to review compliance with decisions of the Human Rights Committee."

43. Mr. SCHEININ said he considered it premature for the Committee to make a recommendation along the lines of that in new paragraph 20. Further discussion was required on the legal implications of holding such a meeting with States parties; only a State party conference for amendments to the Protocol was provided for and was subject to approval by the General Assembly. Another matter to be clarified was the exact role of States parties and the outcome of the conference - the adoption of resolutions or endorsement of Committee decisions or Special Rapporteur's report. If the Committee decided that the matter should be raised in the current report, he proposed that paragraph 20 should be replaced by a text along the following lines: "Currently the Committee is in the process of discussing means of

strengthening the follow-up procedure, inter alia by way of engaging the States parties to the Optional Protocol in a concerted effort in assisting the Committee in its follow-up functions."

44. Mr. KLEIN proposed that paragraph 20 should be deleted.

45. Ms. EVATT endorsed that proposal, pointing out that as a result paragraph 19 would also need to be deleted.

46. Ms. CHANET and Mr. AMOR suggested that both paragraphs 19 and 20 should be deleted.

47. Lord COLVILLE (Rapporteur) said that deletion was the easy option; what was difficult was to succeed in incorporating any new idea in the report. The Committee had begun to discuss follow-up procedures and, recognizing that there was a problem, the Special Rapporteur had suggested a State party meeting to deal with it. With no funds being allocated for the Special Rapporteur's activities other than meetings with representatives from permanent missions, no further progress in the area would be made. However, some reference to the issue in the report would provide a basis on which to work in the future. He therefore urged members to reconsider their proposal to delete all reference to the matter - a totally negative solution - and to come down in favour of Mr. Scheinin's proposal.

48. Mr. LALLAH, while welcoming Lord Colville's initiative, stated his preference for the text proposed by Mr. Scheinin in place of paragraphs 19 and 20.

49. The CHAIRPERSON said she would take it that the Committee wished to adopt the text proposed by Mr. Scheinin.

50. It was so decided.

51. Chapter VII, as amended, was adopted.

Annex I: States parties to the International Covenant on Civil and Political Rights and to the Optional Protocol, and States which have made the declaration under article 41 of the Covenant as at 30 July 1999
(CCPR/C/66/CRP.2/Add.1)

52. Mr. POCAR, referring to the States parties to the Covenant listed under section A, observed that Tajikistan had acceded to the Covenant on 4 January 1999. He suggested that note b should be appended against that State's name to make it clear that, in the Committee's view, the date of entry into force of the Covenant was that of the State's declared independence. Otherwise there would be no indication in the report of the years that had elapsed between the State's independence and its succession to the Covenant.

53. Ms. EVATT endorsed that suggestion.

54. Mr. SCHEININ pointed out that Uzbekistan was an identical case to that of Tajikistan and should be used as a precedent. However, in the case of Kazakhstan, note d applied, since although the State party had not yet issued

a declaration of succession or submitted its instrument of ratification, it continued to be protected by the rights enshrined in the Covenant on the grounds that it was part of a former State party to the Covenant (former Soviet Union).

55. The CHAIRPERSON asked why the date of entry into force of the Covenant in Tajikistan was given as 4 April 1999 when the Committee considered it to be the date of that State's declared independence some considerable time earlier.

56. Mr. ANDO recalled that States which declared their independence from former States parties were considered as successor States and need not comply with ratification procedures. However, some States parties submitted ratification instruments of their own free will as an expression of their new-found independence. In such cases, in accordance with the provisions of the Covenant, the date of entry into force was four months after the date of receipt of the instrument of ratification.

57. The CHAIRPERSON said it should be made clearer in annex I that as far as the Committee was concerned, the date of entry into force for States such as Tajikistan was the date of its declaration of independence.

58. Mr. POCAR observed that the purpose of note b was precisely that.

59. Ms. CHANET said that the column "Date of entry into force" was somewhat misleading; perhaps a heading along the lines of "Date of entry into force recognized by the State party" would be more appropriate.

60. Following further comments by Mr. LALLAH, the CHAIRPERSON, Ms. EVATT and Mr. SCHEININ, Ms. CHANET suggested that, in the case of States like Tajikistan, note a should be inserted under the column entitled "Date of receipt of the instrument of ratification or accession or succession" to indicate receipt of the instruments of accession while note b should appear against the date of entry into force rather than against the country name.

61. Mr. POCAR endorsed that suggestion. He drew attention to an error in the information provided with respect to The former Yugoslav Republic of Macedonia. The reference to note b should be deleted since Macedonia, like the other republics of the former Yugoslavia, had issued a declaration of succession upon gaining independence.

62. The CHAIRPERSON said she took it there was consensus that all the "b" endnotes should be included in the column "Date of entry into force".

63. Mr. POCAR said he was not sure whether the understanding had been that the Baltic States should be dealt with in the same way. He did not think endnote "b" should be appended in their case.

64. Mr. ANDO pointed out that the Baltic States had regarded the Russian occupation as a de facto, not a legal occupation. It was therefore important to append endnote "b" as a reference to their accession to independence.

65. Mr. KLEIN supported that view. With regard to States such as Kazakhstan, however, to which endnote "d" had been appended, he would like to know whether the Committee had asked those States to report, and what their reaction had been.

66. Lord COLVILLE (Rapporteur) said no report had been received from Kazakhstan, and thus the dates had been left blank in the list. He would prefer not to alter that formulation at the present stage of the Committee's session.

67. As he understood it, the Committee's view had been that no changes should be made to the text in respect of States that had been part of the former Yugoslavia, namely Bosnia and Herzegovina, Croatia, Slovenia and The former Yugoslav Republic of Macedonia. In addition, no changes should be made in respect of Estonia, Latvia and Lithuania. In the case of Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Tajikistan, Turkmenistan and Uzbekistan, which had been part of the former Soviet Union, endnote "b" should be transferred from the first to the last column.

68. Mr. POCAR agreed. He pointed out that in the entry for Armenia endnote "a" should be added after the date 23 June 1993, and that in the entry for The former Yugoslav Republic of Macedonia endnote "b" in the first column should be removed.

69. Annex I, as amended, was adopted.

Annex II: Membership and officers of the Human Rights Committee, 1998-1999
(CCPR/C/66/CRP.2/Add.2)

70. Ms. EVATT pointed out that a further footnote should be added in respect of Mr. Buergenthal.

71. Mr. LALLAH suggested that that footnote should be designated by three stars.

72. It was so decided.

73. Annex II, as amended, was adopted.

Annex III: Guidelines adopted in July 1999 (CCPR/C/66/CRP.2/Add.3)

Annex IV: Submission of reports and additional information by States Parties under article 40 of the Covenant during the period under review
(CCPR/C/66/CRP.2/Add.4)

74. Lord COLVILLE (Rapporteur) said he had not yet had an opportunity to check the final text of annex III. When he had done so, it would be sent for translation and again checked to ensure that the various language versions were correct. Annex IV was also in course of preparation.

Annex V: Status of reports considered during the period under review and of reports still pending before the Committee (CCPR/C/66/CRP.2/Add.5)

75. Mr. LALLAH suggested that instead of "not yet considered", which implied that the report was ready for consideration, the fourth column should indicate either "in editing" or "in translation" as appropriate. He also suggested that a sentence should be added at the end of paragraph 52 in chapter III of the report reading "The cumulative list of reports submitted and their status as to their consideration by the Committee are set out in annex V". Without that addition, there was no way of relating annex V to any part of the report.

76. Ms. EVATT suggested that a simpler solution might be to use the formulation "Not yet issued", with a footnote along the following lines "Reports are not issued until they have been edited and translated into the working languages of the Committee". If necessary, a reference could be made to the relevant part of the report itself.

77. Lord COLVILLE (Rapporteur) supported those suggestions, which would make clear to readers of the report the difficulties the Committee had to contend with. He suggested that throughout the report, including the annexes, all footnotes should refer to the relevant paragraph in the body of the text.

78. Mr. ANDO recalled that, in the case of Afghanistan, the Committee had begun consideration of the report but the delegation had asked for a postponement because there had been constitutional changes, and after that the situation in the country had deteriorated. He suggested that a footnote explaining the situation should be added, since otherwise "not yet considered" gave a bad impression.

79. Lord COLVILLE (Rapporteur) pointed out that in the revised version of annex V the entry for Afghanistan had been deleted.

80. Mr. POCAR suggested that the words "... and therefore is not available for consideration" should be added after "Not issued".

81. It was so decided.

82. Annex V, as amended, was adopted.

Annex VI: List of States Parties' delegations that participated in the consideration of their respective reports by the Human Rights Committee at its sixty-fourth, sixty-fifth and sixty-sixth sessions (CCPR/C/66/CRP.2/Add.6)

83. Mr. WIERUSZEWSKI pointed out that the list did not reflect changes that had been made in the composition of delegations. It would need to be checked by the secretariat.

84. Mr. KLEIN said the names of States should also be checked.

85. Annex VI was adopted on that understanding.

Annex VII: General comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights: General comment No. 27 (66) (CCPR/C/66/CRP.2/Add.7)

86. Ms. EVATT suggested that since annex III was to be included in the report despite the fact that the final text had not yet been approved, the Committee's general comment on article 12 should also be included.

87. Mr. ANDO pointed out that the Committee had already decided that it could not adopt annex III until the text had been finalized in all languages.

88. Mr. POCAR recalled that following consideration of the general comment on article 12, it had likewise been agreed that formal adoption should be delayed until the text was available in all languages.

89. Ms. EVATT said that in that case she hoped that the two documents concerned could be adopted during the first few days of the next session and then distributed to States parties. That would mean that adoption would only be delayed by some two months.

90. Annex VII was adopted on that understanding.

Annex VIII: Letter from the Chairperson of the Committee to the Chairman of the International Law Commission dated 5 November 1998 (CCPR/C/66/CRP.2/Add.8)

91. Annex VIII was adopted.

Annex IX: List of documents issued during the reporting period (CCPR/C/66/CRP.2/Add.9)

92. Annex IX was adopted.

Annex X: Follow-Up replies on the implementation of the Committee's views: Case No. 481/1991 - Villacres Ortega v. Ecuador (CCPR/C/66/CRP.2/Add.10)

93. Lord COLVILLE (Rapporteur) pointed out that the table of contents (CCPR/C/66/CRP.1/Add.1/Rev.1) wrongly referred to annex X as "Short guide to concluding observations". That was in fact a document that he himself had drafted, which would eventually be circulated in all languages for the Committee's consideration at its next session. It had not been his intention to include it in the annual report.

94. Ms. EVATT welcomed the agreement set out in annex X. She suggested that an addition should be made to the heading to make it clear that the document had come from the State party and not from the Committee itself.

95. Mr. ANDO pointed out that in the heading on page 2 "Committee on Human Rights" should be amended to read "Human Rights Committee".

96. Annex X, as amended, was adopted.

Annex XI: Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR/C/66/CRP.2/Add.11)

97. The CHAIRPERSON noted that the words "of the Human Rights Committee" should be deleted in the title.

98. Annex XI, as amended, was adopted.

Annex XII: Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR/C/66/CRP.2/Add.12)

99. Annex XII was adopted.

100. Lord COLVILLE (Rapporteur) said the letter written by the Chairperson to the High Commissioner for Human Rights should be included in the report as an additional annex, with a reference to paragraph 48 of chapter I. Since the Committee had not yet formally adopted the guidelines, paragraph 45 of chapter II would have to be deleted.

101. Ms. EVATT suggested that that point could be met by the addition to paragraph 45 of a sentence along the following lines: "The Committee completed its consideration of the Guidelines".

102. She recalled that the previous year she had insisted, with the support of the secretariat, that the whole report should be published as a single document, together with all the annexes. It had not proved possible to do so that year, but she hoped that that could be done in the case of the current year's report.

103. The draft annual report of the Human Rights Committee as a whole, as amended, was adopted subject to approval of the final text of annexes III and IV in all languages.

104. The CHAIRPERSON said that thanks and congratulations were due to Lord Colville for his work in preparing the report.

105. Mr. AMOR, while commending Lord Colville for his efforts, deplored certain comments made in connection with the discussion on paragraphs 19 and 20 of the report. To describe criticisms of a new proposal as negative or unconstructive was unacceptable and he hoped that such incidents would not recur.

106. Mr. KRETZMER also thanked Lord Colville, together with the Chairperson and the secretariat, but wondered whether it was really necessary for the Committee to spend almost an entire day on adopting its report. Would it not be possible at future sessions to let members see the draft early enough to enable them to submit their amendments to the secretariat, thus saving the Committee's time?

107. Ms. CHANET also thanked Lord Colville and said that the Rapporteur's task had been particularly difficult at the present session. Mr. Kretzmer's suggestion could not have been acted on as parts of the draft report, including paragraphs 19 and 20, had not been ready until the last minute and then only in English. She fully agreed with Mr. Amor that discussion of new suggestions should not be discouraged. It was to be hoped that the technical difficulties which had arisen at the present session would have been resolved by the next session and that half a day would suffice for the consideration of the report.

108. Lord COLVILLE (Rapporteur) thanked all previous speakers for their generous comments and welcomed the suggestion made by Mr. Kretzmer. The problem at the present session had been with the translation of texts into French and Spanish owing to competing demands on the translation services from other bodies. At the next session he would make an even earlier start on drafting the report in the hope of placing every part of the text before members in good time.

The public part of the meeting rose at 5.15 p.m.