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Summary record of the 2830th meeting

Held at the Palais Wilson, Geneva, on Thursday, 28 July 2011, at 3 p.m.

Chairperson: Mr. Iwasawa (Vice-Chairperson)
later: Ms. Majodina (Chairperson)

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Any corrections to the records of the public meetings of the Committee 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 p.m.

Adoption of the annual report to the General Assembly

Draft report of the Human Rights Committee to the General Assembly at its sixty-sixth session (CCPR/C/102/CRP.1 and Add.1 to 7; CCPR/C/102/CRP.2 and Add.1 to 3)

1. **The Chairperson** invited the Rapporteur to introduce the draft annual report, following which the Committee would consider the draft chapter by chapter.
2. **Ms. Keller** (Rapporteur) said that the draft followed the same structure used in the past, which would not be the case for future annual reports, given the new rules on the length of documents. The draft had been prepared several months before the current session so that it could be translated into the Committee's working languages. It was therefore not fully up to date but would be updated by the end of the session. She drew the Committee's attention to Chapter I, especially paragraphs 20 and 21, concerning the Committee's comments addressed to the International Law Commission (ILC) on the guidelines on reservations to treaties, which the Bureau recommended expanding. She also noted that Chapter II, paragraph 47, on the meeting with NGOs and national human rights institutions held during the current session, and Chapter III, paragraph 64, on the dialogue under way with the Seychelles, would have to be updated to reflect decisions and developments at the current session.
3. **Mr. Thelin** said that he had not received a hard copy of the Committee's previous annual report; if there was one document that Committee members should have in their possession for constant consultation, it was the annual report, a copy of which should automatically be sent to every Committee member.
4. **Mr. O'Flaherty** requested that a copy of the annual report on the Committee's 100th, 101st and 102nd sessions should be distributed to members at the Committee's October 2011 session.
5. **Mr. Salvioli** said that the previous annual report was still not posted on the Committee's page of the website of the Office of the High Commissioner. If the Committee wished its work to be publicized and consulted, such information must be readily accessible, including to persons outside the United Nations system.
6. **Mr. Neuman** said that, inasmuch as annual reports would be less detailed in future, given the restrictions on the length of documents, it was all the more important to post information on the Committee's work on the website, particularly its concluding observations and its Views.
7. **Ms. Chanet** proposed that the Committee's concerns regarding the importance of posting the annual report and any other pertinent information on the Committee's work on the website should be added to Chapter I, section J, on publicity for the work of the Committee.
8. *It was so decided.*
9. **The Chairperson** invited the Committee to consider Chapters I to VII (CCPR/C/102/CRP.1/Add.1 to 7) and the annexes (CCPR/C/102/CRP.2/Add.1 to 3), followed by the Table of contents and Executive Summary (CCPR/C/102/CRP.1).

*Chapter 1**Jurisdiction and activities (CCRP/C/102/CRP.1/Add.1)*

10. **The Chairperson**, speaking as a Committee member and explaining the Bureau's recommendation that paragraphs 20 and 21 should be expanded, said that two letters had been sent to the ILC, the first in July 2010 and the second in April 2011, expressing the Committee's concerns with regard to the Commission's draft guidelines on reservations. The final draft on reservations, which would probably be adopted at the Commission's sixty-third session and the text of which was available on the ILC website, took into account several of the Committee's recommendations. The Bureau therefore proposed that the Committee make a point of recording that fact in the report and that the full text of both letters to the ILC should be included in paragraphs 20 and 21.

11. **Ms. Chanet** said that it would have been helpful if copies of the draft guidelines reflecting the Committee's recommendations had been distributed to members. As for what the report should include, the Committee's concerns about certain guidelines should be explained. Until such time as the ILC adopted a final version of the guidelines, however, it could not be said to have taken the Committee's recommendations into account. A more cautious formulation would be preferable, to the effect that the ILC would appear to have taken the Committee's concerns into account.

12. **The Chairperson** agreed with Ms. Chanet's proposal.

13. **Mr. Neuman** said that it was important to ensure that the Committee's letters to the ILC were sufficiently clear for the reader to fully understand which guidelines were of concern to the Committee and why. To avoid any risk of confusion, the new paragraphs 20 and 21 should clearly indicate that the Committee's concerns related to draft guidelines, the final text of which the ILC had not yet adopted.

14. **Mr. Lallah** proposed that the Committee's two letters to the ILC should be annexed to the report, and a reference in that regard included in the relevant paragraphs.

15. **The Chairperson** said that there seemed to be a consensus that the Committee's letters to the ILC should be included. He suggested allowing the Rapporteur and the secretariat to decide how best to proceed.

16. *It was so decided.*

17. **Mr. O'Flaherty** said that the first paragraph should include a list of States that had become parties to the Covenant and its first Optional Protocol during the period covered in the report. Also, while paragraph 26 recalled that the Committee had adopted its revised general comment No. 10 on article 19 of the Covenant at its 102nd session, there was no link to the text itself. He would like confirmation that the text would in fact be annexed to the report.

18. **Mr. Thelin** proposed that in paragraph 26, in the fifth sentence beginning: "A significant number of comments were received ...", the exact number of States parties, national human rights institutions, NGOs and academics that had sent comments to the Committee should be indicated in order to underscore the tremendous interest in the draft general comment on article 19. He also proposed adding the following sentence at the beginning of paragraph 27: "According to article 36 of the Covenant, the Secretary-General of the United Nations is obliged to provide the Committee with the necessary staff and facilities,"; as well as inserting the adjective "grave" before "concern" in the first sentence. In the second sentence the words "within the United Nations" should be inserted following "general rules". In the last sentence of paragraph 28 he proposed inserting "presently not considered as 'mandated'" following "lists of issues", as well as "and requests that this problem be addressed as a matter of urgency" following "working languages". Lastly, in

paragraph 30, on the problems regarding public access to the Committee's public meetings during its sessions at headquarters, the following should be added at the end of the paragraph: "and urges those responsible in New York to resolve the issue".

19. **Mr. Flinterman**, with regard to section J on publicity for the work of the Committee, proposed adding a paragraph on the new measures adopted at the 102nd session to allow video recording and webcasting broadcast of all the Committee's public meetings.

20. **Ms. Chanet** said that the second part of the first sentence of paragraph 29 (h) implied that some sessions of the Committee might not raise sufficient interest to justify holding a press conference at the end, and should therefore be deleted. It would suffice to say "The traditional end-of-session press conference should continue to be held save in exceptional circumstances".

21. **Mr. Amor** said he wished to draw attention to the case of Tunisia, which, after its revolution, had ratified the first Optional Protocol to the Covenant and subsequently deposited the instrument of ratification on 29 June 2011. Although the Optional Protocol had not yet entered into force in Tunisia, Tunisia was legally a party to the Protocol and was therefore the 114th State party to that instrument. That fact should be reflected in the chapter under discussion and the relevant annex.

22. The draft report did not mention the issue of the emoluments received by the Committee. For all that such a mention might have no effect, it was important to recall that the decision taken in that regard was in violation of the Covenant.

23. **The Chairperson** said that the issue of emoluments would be noted in the annual report in terms similar to those in the previous annual report.

24. **Ms. Fox** (Committee Secretary) said that a situation similar to that of Tunisia had occurred with Pakistan's accession to the Covenant. The Committee had indicated in a footnote to the relevant annex that the number of States parties to the Covenant would be 166 as of 25 September 2010, following the Covenant's entry into force in Pakistan, which had deposited its instrument of ratification on 25 June 2010. The same would be done for Tunisia.

25. **Ms. Keller** (Rapporteur) said that additions and amendments deriving from members' proposals would be made to Chapter I following the usual editorial procedure.

26. *Chapter I, as amended, was adopted.*

Chapter II

Methods of work of the Committee under article 40 of the Covenant and cooperation with other United Nations bodies (CCPR/C/102/CRP.1/Add.2)

27. **Mr. Flinterman** proposed deletion of paragraph 56 on the ground that the meeting it mentioned had not taken place during the period covered by the report.

28. **Mr. Thelin** proposed a new subheading to introduce paragraphs 41 to 46, which dealt with Pakistan's reservations to paragraph 40. He also proposed that the report should mention action taken with regard to Belarus.

29. *The proposals made by Mr. Flinterman and Mr. Thelin were adopted.*

30. *Chapter II, as amended was adopted, subject to editorial changes.*

*Chapter III**Submission of reports by States parties under article 40 of the Covenant
(CCPR/C/102/CRP.1/Add.3)*

31. **Mr. Thelin** proposed inserting a new paragraph following paragraph 65, indicating the number and names of States parties whose situation had been considered in the absence of a report since the procedure had been initiated. It would also be worthwhile to add a new section C containing the names of States parties whose reports had been considered and the date their next report was due. Rather than being listed in order of the Committee's sessions, as in Chapter IV for example, they should be put into three groups corresponding to the period before a new report was expected: three, four or five years.

32. **Ms. Chanet** said that if the dates for submission of States parties' reports were noted without further explanation, readers might not understand why the Committee had chosen one date rather than another. It would be premature to adopt Mr. Thelin's proposal without further reflection on how to present the information.

33. Following an exchange of views in which **Ms. Keller** (Rapporteur), **Mr. Neuman**, **Mr. Flinterman**, **Mr. Rivas Posada**, **Mr. Bouzid**, **Ms. Chanet**, **Mr. Lallah** and **Mr. Thelin** took part, **the Chairperson** said that he sensed consensus for accepting Mr. Thelin's proposal to add a reference to States parties whose reports had been considered by the Committee during the period covered by the annual report, and the date on which their next report was expected. The list would begin with States parties whose reports were due in five years, followed by those due in four years, then those due in three years, on the understanding that those deadlines would not be specifically indicated.

34. *Chapter III, as amended was adopted, subject to the necessary changes.*

*Chapter IV**Consideration of reports submitted by States parties under article 40 of the Covenant
(CCPR/C/102/CRP.1/Add.4)*

35. *Chapter IV was adopted subject to the required additions.*

*Chapter V**Consideration of communications under the Optional Protocol
(CCPR/C/102/CRP.1/Add.5)*

36. **Mr. Thelin** proposed addition of a footnote recalling the Committee's general comment No. 33 on obligations of States parties under the Optional Protocol.

37. **Mr. O'Flaherty**, agreeing, added that a brief paragraph referring to general comment No. 33 might even be added. The chapter should also include some reference to the study on review of reparation measures entrusted to Mr. Salvioli.

38. *The amendments proposed by Mr. Thelin and Mr. O'Flaherty were adopted.*

39. *Chapter V, as amended, was adopted.*

*Chapter VI**Follow-up on individual communications under the Optional Protocol (CCPR/C/102/CRP.1/Add.6)*

40. **Mr. O'Flaherty** proposed adding a brief paragraph explaining the follow-up and implementation procedure.
41. **Ms. Keller** said that if no other paragraph of the draft report explained the follow-up procedure, one would be added to the current chapter.
42. *Chapter VI, as amended, was adopted.*

*Chapter VII**Follow-up to concluding observations (CCPR/C/102/CRP.1/Add.7)*

43. **Ms. Chanet**, speaking on paragraph 205, proposed the deletion of the words “extent and depth of” in the second sentence and also pointed out that the paragraph did not mention the United Nations Interim Administration in Kosovo (UNMIK), to which the procedure likewise applied. She had met with the representative of Botswana, who had been very cooperative and had assured her that the requested information would be submitted. That being the case, it would be inappropriate to put Botswana in the same category as other States, for example Nicaragua or Panama, which, despite numerous reminders, had years later still not submitted the information requested.
44. **Ms. Keller** said that she would amend the paragraph to reflect Ms. Chanet's proposal.
45. **Mr. O'Flaherty** said that the fourth sentence should be rewritten because, as it stood, it implied that the States listed had never submitted requested information since the establishment of the procedure in 2001, which was not the case.
46. **The Chairperson** said that the Rapporteur, together with the secretariat, would review the wording of paragraph 205 in all three working languages so as to remove any ambiguity.
47. *Chapter VII, as amended, was adopted.*

*Annex I**States parties to the International Covenant on Civil and Political Rights and to the Optional Protocols, and States which have made the declaration under article 41 of the Covenant as of 29 July 2011 (CCPR/C/102/CRP.2)*

48. *Annex I was adopted, subject to addition of the date of entry into force of the Optional Protocol for Croatia.*

*Annex II**Membership and officers of the Human Rights Committee, 2010–2011 (CCPR/C/102/CRP.2/Add.1)*

49. **Mr. O'Flaherty** said that he would like the word “Nationality” to head the countries of origin of the list of Committee members to make it quite clear that they were nationals of those countries but not their representatives.

50. **Mr. Flinterman** proposed adding an endnote referring to article 28 of the Covenant, which requires members of the Committee to be citizens of States parties to the Covenant but to serve in their personal capacity.

51. *Annex II, as amended, was adopted.*

Annex III

Submission of reports and additional information by States parties under article 40 of the Covenant (as of 29 July 2011) (CCPR/C/102/CRP.2/Add.2)

52. **Mr. Fathalla** proposed adding a note pointing out that there was a rule whereby if a State party had not submitted a report after a certain number of years, the country's situation could be considered in the absence of a report.

53. **Mr. Amor** said that it might be unwise to mention a rule that the Committee might not necessarily be able to follow.

54. **Mr. Thelin** said that a reference to rule 70 of the Committee's rules of procedure could be added, without saying that the Committee would, as a matter of course, consider the situation of those States parties in the absence of a report.

55. **The Chairperson** said that the Committee did not seem opposed to inserting a reference to the procedure followed by the Committee in the absence of a report from a State party, and entrusted the Rapporteur with finding the appropriate wording and its place in the text.

56. **Mr. Fathalla** said that a new endnote, number 6, should be added, indicating that the Committee had decided to send a letter of reminder to the Syrian Arab Republic.

57. *Annex III, as amended, was adopted.*

Annex IV

Status of reports and situations considered during the period under review, and of reports still pending before the Committee (CCPR/C/102/CRP.2/Add.3)

58. *Annex IV was adopted.*

Table of contents and Executive Summary (CCPR/C/102/CRP.1)

59. **Mr. Thelin** proposed, for reasons of clarity, adding a phrase to the first sentence of the fifth paragraph, which would then read: "The Committee once more deplors that a large number of States parties, *currently 55, that are five or more years behind*, do not fulfil their reporting obligations under article 40 of the Covenant." He also proposed amending the beginning of the first sentence of the last paragraph for it to read: "Finally, *while recalling the relevant obligation of the Secretary-General of the United Nations under article 36 of the Covenant*, reaffirms its grave concern at the insufficiency of personnel resources ..."

60. **Mr. O'Flaherty** said that the Summary should contain a reference to the Committee's general comment on article 19.

61. **Ms. Majodina** said that her name should be deleted from the penultimate paragraph because she had been unable to attend the twelfth inter-committee meeting.

62. **Mr. O'Flaherty** said that it had thus far been the Committee's practice to refer in the Executive Summary to the emoluments paid to the members of the Committee. If it were omitted, it should be replaced with a reference to article 35 of the Covenant, which

dealt with that issue. That could be done by adding in the last paragraph, immediately after the reference to article 36 proposed by Mr. Thelin, the phrase “as well as with regard to article 35”, without going into detail.

63. *The Executive Summary, as amended, was adopted.*

64. *The draft annual report of the Committee, as a whole (CCPR/C/102/CRP.1 and Add.1 to 7; CCPR/C/102/CRP.2 and Add. 1 to 3), as orally amended, was adopted, subject to editorial changes by the secretariat.*

The meeting was suspended at 4.40 p.m. and resumed at 4.55 p.m.

65. *Ms. Majodina took the Chair.*

General comments of the Committee

66. **The Chairperson** asked Committee members for their initial thoughts on what the topic of the Committee’s next general comment might be.

67. **Ms. Keller** proposed articles 2 and 26 of the Covenant, on equality and non-discrimination respectively.

68. **Mr. O’Flaherty** said that a general comment on article 26 would be particularly worthwhile because the Committee’s consideration of communications had shown that there was great divergence in approaches to article 26. A general comment would help identify common positions and share experiences, practices and jurisprudence.

69. **Mr. Salvioli** said that Ms. Keller’s proposal of a general comment on articles 2 and 26 was very interesting. Both articles would provide a basis for more in-depth analysis not only on the issues of equality and non-discrimination but also on the concept of the indivisibility of human rights.

70. **Sir Nigel Rodley** said that the Committee had been entertaining the idea of reviewing its general comment No. 8, on article 9, right to liberty and security of person, for some time. The issue of arbitrary arrest and detention was central to the Committee’s work, both in the context of consideration of communications and in its dialogue with States parties. General comment No. 8 very much needed to be updated in the light of the experience gathered during more than a quarter of a century. The same was true of general comment No. 6, on article 6, right to life, which had been adopted at approximately the same time. His preference, however, would be article 9, in particular because of certain measures that had been adopted in the past 10 years in the name of the fight against terrorism.

71. **Mr. Amor**, while welcoming the opportunity to discuss the issue, said that it would be premature to take any decision. He was very much in favour of Sir Nigel Rodley’s proposal relating to article 9, particularly because that article had considerable scope in practice, and the related jurisprudence needed to be further developed.

72. **Mr. Thelin** supported the idea of updating general comment No. 8, on article 9.

73. **Mr. Salvioli** said that it was too early to decide; the issue could be discussed at the Committee’s session in October 2011. Preparation of a general comment was not limited to compiling the relative jurisprudence; it also entailed studying human rights situations that posed problems with regard to implementation of the Covenant, even in the absence of jurisprudence from the Committee. He had, for example, noticed some misgivings over discussion of the issue of new technologies during consideration of general comment No. 34 on article 19, freedom of opinion and expression. It would have been disappointing if the comment had not dealt with that issue merely because the Committee had no relevant jurisprudence in that area.

74. **Mr. Neuman** said that there were several criteria for deciding on the topic for the Committee's next general comment. One might be the existence of major differences or gaps in the jurisprudence on a particular issue, which would require discussion to find solutions; that would be the case for article 26. Another criterion might be the emergence of new situations, a category that would fit the general comment on article 9.

75. **Mr. O'Flaherty** said that the Bureau might prepare a proposal for the October 2011 session based on the suggestions made at the current session.

76. **Sir Nigel Rodley** agreed with Mr. Amor and Mr. O'Flaherty that it would be premature to take a decision. The Bureau could perhaps study the matter with the October 2011 session in mind, taking into account the options and criteria expressed during the current discussion.

77. **Mr. Amor** said that even if the Bureau determined a number of criteria, the Committee would need to revisit the issue in plenary at the next session.

78. **Mr. Rivas Posada** agreed that it would be preferable to wait before taking any decision, especially given the complexity of the factors to be considered: the importance of the issue; whether the Committee had sufficient jurisprudence; or whether, on the contrary, the scope, nature and procedure for application of an article for which the Committee had no jurisprudence would need interpretation. Since experience had shown that it took at least two years to draft a general comment, the rapporteur's long-term availability was also an important consideration.

79. **Mr. Iwasawa** said that the preparation of general comments was provided for in article 40, paragraph 4, of the Covenant, which stated that the Committee "shall transmit its reports, and such general comments as it may consider appropriate, to the States parties". It was only in the early 1990s that the Committee had begun to produce concluding observations for States parties, in addition to the general comments.

80. **Mr. Lallah** said that it would be useful if the members of the Committee familiarized themselves with the background of the matter, in particular with the summary records of the meetings at which the preparation of general comments and the legal basis on which they were prepared had been discussed for the first time soon after the creation of the Committee. For 35 years States parties had been questioning the opinions expressed in the Committee's general comments, but for a long time its competence to prepare general comments had never been contested. It was only recently that States parties had begun to question the legal basis of general comments.

81. **Sir Nigel Rodley** said that it was the Human Rights Committee that had initially debated the legitimacy of applying article 40, paragraph 4, to the State party reports. It had subsequently adopted 34 general comments that were taken seriously by NGOs, States parties and academics, and other treaty bodies had followed its example. He agreed with Mr. Lallah that it would be interesting to revisit the origins of general comments without, however, reopening the discussion there and then.

82. **Mr. O'Flaherty** said that reaffirming the legal basis of preparation of general comments would serve no purpose, given that there were official summary records of those discussions, and especially since the question had regularly been raised in the General Assembly in recent years during discussions on human rights resolutions. As a matter of fact, 23 States parties had submitted proposals for the preparation of general comment No. 34 without ever questioning its legitimacy.

83. **Mr. Flinterman** said that article 40, paragraph 4, of the Covenant had provided the basis for similar but more specific provisions contained in later human rights instruments and which explicitly gave those treaty bodies a mandate to make recommendations and

prepare general comments, a fact that supported the way the paragraph had been interpreted.

84. **Mr. Salvioli** said that the simplest justification of the general comments was the fact that the Committee had been created to apply and interpret the Covenant.

85. **The Chairperson** said that the Committee would take up the issue of the choice of an article for a general comment and of a rapporteur at its next session.

Organizational and other matters, including the report of the pre-sessional working group on individual communications

86. **Mr. Iwasawa** asked whether the secretariat had any further information on the effects of the “Greening the UN” initiative on the Committee’s work.

87. **Ms. Fox** (Committee Secretary) said that “Greening the UN” was aimed mainly at reducing paper use in the United Nations system as a whole by no longer printing certain documents or publications. Nevertheless, as requested by the Committee, its report to the sixty-sixth session of the General Assembly would be distributed at its October session. Some treaty bodies had already held successful “paperless” sessions during which most information had been disseminated electronically. For several months now the Human Rights Committee had had an extranet site which had spawned two conflicting views: Ms. Keller was satisfied with the site whereas Mr. Iwasawa had some reservations. Any measures to cut down on paper documents would first have to be discussed by the Committee.

88. **Mr. O’Flaherty** proposed that for the time being, the files containing all the documents relating to a given country should be distributed only to the special teams responsible for studying that country’s report, in order to avoid waste. The other Committee members could make do with the Committee’s core documents and, should the need arise, have access to one complete file made available in the room. However, his proposal was by no means intended to replace use of the extranet site.

89. **Mr. Thelin** said that he, for one, could not work exclusively with electronic documents. The Organization’s policy, the aims of which were laudable, in fact transferred responsibility for paper consumption to others, particularly to those Committee members who chose to print out electronic documents for their own use.

90. **Mr. Iwasawa** said that he would simply like the extranet site to be made more user-friendly, for example by the possibility of downloading all the documents simultaneously.

The meeting rose at 6p.m.