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HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2390th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 25 July 2006, at 10 a.m.

Chairperson: Ms. CHANET

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The meeting was called to order at 10.15 a.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 8) (continued)
(CCPR/C/GC/32/CRP.1/Rev.1)

1. The CHAIRPERSON invited members to resume consideration of draft general comment No. 32 (CCPR/C/GC/32/CRP.1/Rev.1).

Paragraph 34

2. Mr. KÄLIN, speaking as rapporteur on draft general comment No. 32 concerning article 14 of the Covenant, said that the text of paragraph 34 was based on the Committee's decision in the Carlos Correia de Matus v. Portugal case (CCPR/C/86/D/1123/2002).

3. Sir Nigel RODLEY observed that that decision had not been unanimous and was contrary to European Court of Human Rights jurisprudence. It might be unwise to reflect a decision of such a contentious nature in a general comment.

4. Ms. PALM, endorsing Sir Nigel's observation, said that it might be judicious to reword the paragraph so as to avoid obvious divergences from the views of another international human rights body.

5. The CHAIRPERSON suggested replacing the phrase "is thus not compatible with the Covenant" in the last sentence by "poses certain problems with regard to the Covenant", followed by a reference to the relevant case law.

6. Mr. KÄLIN pointed out that the Committee's decision did not contradict European Court of Human Rights jurisprudence in general; the divergence had arisen in respect of Carlos Correia de Matus v. Portugal only. Avoiding references to decisions that might be at variance with the views of other international bodies could undermine the Committee's authority. However, in a spirit of consensus, he proposed amending the last sentence to read: "Therefore, domestic legislation should avoid total exclusion of any possibility whatsoever to defend oneself in criminal proceedings without the assistance of counsel."

7. Paragraph 34, as amended, was adopted.

Paragraph 35

8. The CHAIRPERSON, supported by Mr. LALLAH, suggested replacing the words "such as" in the penultimate sentence by "for example". The examples mentioned were based on the Committee's decisions on relevant common-law cases. It was important to take account of the fact that misconduct or incompetence on the part of the defence counsel might assume different forms in civil law jurisdictions. A relevant reference should be added.

9. Mr. AMOR said that the current wording of the penultimate sentence was unclear. It might be preferable to devote one sentence to each of the issues raised, namely: the duty of counsel to defend the accused; the obligation of the judge to ensure that counsel's behaviour served the interests of justice; and State responsibility in the event of article 14 violations.

10. Mr. RIVAS POSADA drew attention to several inconsistencies between the Spanish and English versions of paragraph 35 that should be rectified.

11. Paragraph 35 was adopted, subject to editorial amendments.

Paragraph 36

12. Mr. ANDO suggested that, as in paragraph 29, the word “emanation” in the second sentence should be replaced by “application”.

13. Mr. AMOR proposed that the word “quelconque” should be inserted before “stade” in the penultimate sentence of the French version.

14. Mr. SOLARI YRIGOYEN said that the second sentence of the Spanish version should be rephrased for the sake of clarity.

15. Paragraph 36 was adopted, subject to editorial amendments.

Paragraph 37

16. Mr. RIVAS POSADA said that he was unclear as to the meaning of the second sentence.

17. Mr. KÄLIN said that certain States parties might call into question the need for the assistance of an interpreter if the proceedings were expected to result in acquittal, or if the defendant’s guilt had been established unequivocally prior to the hearing. It was therefore important to make it clear that the right set out in article 14, paragraph 3 (f), must be protected irrespective of the outcome of the proceedings.

18. He suggested amending the last sentence to read “not entitled to the free assistance of an interpreter if he knows the official language sufficiently well to defend himself effectively”, so as to avert misinterpretation of the word “adequately”.

19. The CHAIRPERSON observed that one of the key issues arising in connection with the right to the free assistance of an interpreter was timing. The Covenant could be interpreted as guaranteeing that right only from the moment when the criminal charge was brought. However, in certain situations, the assistance of an interpreter might be required at the time of arrest, so she suggested including a relevant reference.

20. Mr. AMOR agreed. Also, defendants sometimes refused on principle to speak the official language used in the proceedings. Some States parties had provided defendants with interpreters despite their perfect command of the language of the proceedings. That possibility should not be ruled out, and he therefore proposed inserting the words “in principle” before “not entitled” in the last sentence.

21. Mr. ANDO suggested that the first sentence should make reference to the principle of fairness in criminal proceedings, as well as that of equality of arms.

22. Mr. SHEARER said that the question of providing language services for the accused prior to the trial was addressed in paragraph 28.

23. The CHAIRPERSON suggested that, since there was no mention of the assistance of an interpreter in paragraph 28, a reference should be made to that paragraph in paragraph 37.

24. Mr. KÄLIN proposed that in the first sentence the words “the principle of equality of arms” should be replaced by “the principles of fairness and equality of arms”. In order to clarify when an interpreter’s assistance should be available, the second sentence should read: “That right exists during all oral phases of the proceedings and regardless of their outcomes.” The last sentence should be amended to read: “However, an accused whose mother tongue differs from the official court language is, in principle, not entitled to the free assistance of an interpreter if he has sufficient knowledge of the court language to defend himself efficiently.”

25. Mr. SHEARER suggested that an alternative formulation for the first part of the second sentence was “This right arises at all stages of the proceedings and irrespective of their purpose.” The phrase “irrespective of their purpose” was necessary to indicate that whatever was happening in court, the accused had the right to understand. The phrase “and regardless of their outcomes” should not be included since it went without saying that the defendant had the right to understand the trial.

26. The CHAIRPERSON questioned the need to include the phrase “irrespective of their purpose”.

27. Mr. KÄLIN proposed that the sentence should read: “This right arises at all stages of the oral proceedings and applies to aliens as well as nationals.”

28. Paragraph 37, as amended, was adopted.

Paragraph 38

29. Mr. SOLARI YRIGOYEN pointed out that, in the last sentence of the Spanish version, the correct form of the verb should be “establecerse”.

30. Mr. WIERUSZEWSKI requested that the footnote to the last sentence should include examples of case law from a variety of regions, including some from Russian-speaking States.

31. Mr. GLÈLÈ AHANHANZO proposed that the last sentence should begin “The law should prescribe”, not “require”.

32. Paragraph 38, as amended, was adopted subject to editorial amendments.

The meeting was suspended at 11.10 a.m. and resumed at 11.40 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Meeting of the working group on reservations established by the fourth Inter-Committee Meeting and the seventeenth meeting of chairpersons of the human rights treaty bodies (continued) (HRI/MC/2006/5)

33. Sir Nigel RODLEY, speaking as Chairperson-Rapporteur of the meeting of the working group on reservations held on 8 and 9 June 2006, recalled the question about a report of the Special Rapporteur of the Third Committee of the General Assembly on reservations to human rights treaties that had been asked during the Committee's previous consideration of that subject. He apologized for not having realized at the time that Mr. Solari Yrigoyen had in fact intended to refer to the report of the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1999/28). The approach adopted in that report had been to allow States parties to decide whether they wished to remain bound by a treaty after a reservation had been declared invalid. States could thus simply denounce the treaty and had the option to re-ratify it if they so wished. The working group had indeed discussed that report. While the solution it provided was appropriate to most treaties, that was not the case with the Covenant since, in the Committee's opinion, the Covenant was non-denounceable. While it might be useful to make reference to the conclusions drawn in that report for other treaty bodies, such a reference would not support the position of the Committee.

34. While the notion of presumption in recommendation 7 could be interpreted as a possible weakening of the Committee's position, as expressed in general comment No. 24, that was certainly not the intention. The idea was that the State party should identify its intentions in good faith, and that if a reservation was declared invalid, the expectation was that the State party would be considered as remaining a party to the treaty without the benefit of the reservation. If the working group met again, the Committee's representative should approach the subject from that perspective.

35. Concerning the phrase "care must be exercised" in recommendation 2, the Committee should not dwell on the terminology. The basic message was that it should not be automatically assumed that any statement made at the time of ratification, especially a statement called anything other than a reservation and made by a State party that had also made reservations, was intended to be a reservation.

36. Mr. SOLARI YRIGOYEN said that in the Spanish version of recommendation 7 the word "desmentida" should be replaced by "refutada" in order to bring it into line with the French and English texts. Discussions on the Committee's stance on reservations should take into account the two communications on the issue submitted to Mr. Alain Pellet, Special Rapporteur of the International Law Commission, by the Chairperson of the Committee in April and November 1998. The discussions must also take account of the Committee's general comment No. 24, which, contrary to Mr. Pellet's concerns, had not hampered ratification of the Covenant. In fact, a further 28 States had ratified the Covenant since the adoption of that general comment.

37. Mr. AMOR suggested that discussions should be held on the consequences of States that were parties to treaties containing provisions on the same issues, entering reservations to one treaty but not another. The Committee had tended to consider that articles 3 and 26 of the Covenant were non-derogable since equality, particularly between men and women, was a general norm of international law. Some States, despite not having lodged reservations to the Covenant on those articles, had later ratified the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of the Child and lodged reservations to similar provisions. That lack of consistency undermined the implementation of the Covenant and affected the validity of reservations to other treaties.

38. The CHAIRPERSON suggested that the issue raised by Mr. Amor could be discussed at the next meeting of the working group.

39. Sir Nigel RODLEY, responding to the comments made by Mr. Solari Yrigoyen, said that the working group's discussions had taken place in full knowledge of the Special Rapporteur's original views on the subject. Those views had, however, been influenced by a misunderstanding, owing to the omission of the word "generally" in the final sentence of paragraph 18 of the French version of general comment No. 24. That omission had been pointed out to Mr. Pellet, who had since said that he was prepared to accept that in certain circumstances, for the purposes of the discharge of their mandates, treaty bodies might be able to determine the legal consequences of invalidity. That change constituted considerable progress, and such developments should be encouraged.

40. Reservations made to other treaties could not be transferred to the Covenant, and the idea that the treaty body receiving the reservation should take account of the State party's lack of reservations concerning the same provisions in other treaties when making decisions on validity, was particularly interesting.

41. The CHAIRPERSON considered that the issue raised by Mr. Amor was of greater concern to the other treaty bodies than to the Human Rights Committee, since the majority of reservations had been made to other treaties rather than the Covenant.

42. Sir Nigel RODLEY said that the final sentence in the working group's recommendation 7 should have read: "While this intention should be identified in good faith, the normal expectation would be that the State would prefer to remain a party to the treaty without the benefit of the reservation."

43. The CHAIRPERSON said that the Committee's opinions on the recommendations should be communicated to the working group before its next meeting and asked when that meeting would be held.

44. Sir Nigel RODLEY said that it would be appropriate if the working group meeting was held in time for the individual treaty bodies to discuss its outcome, before the

Inter-Committee Meeting. The results of the discussions of the Inter-Committee Meeting could then be transmitted to the International Law Commission. With that in mind, he suggested that the next working group meeting should be held at the end of 2006 or early in 2007.

45. Mr. AMOR raised the question whether it would be beneficial for Sir Nigel Rodley to visit the other treaty bodies before the next meeting of the working group, in order to hear their views.

46. Sir Nigel RODLEY said he thought that such visits ran the risk of making the discussions more complicated than necessary.

The meeting rose at 12.35 p.m.