



## International Covenant on Civil and Political Rights

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### Human Rights Committee 105th session

#### Summary record (partial)\* of the 2912th meeting\*\*

Held at the Palais Wilson, Geneva, on Friday, 20 July 2012, at 3 p.m.

*Chairperson:* Ms. Majodina

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\* No summary record was prepared for the rest of the meeting.

\*\* No summary record was issued for the 2911th meeting.

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*The discussion covered in the summary record began at 4.10 p.m.*

### **Organizational and other matters**

#### *Preparation for a retreat in The Hague in 2013*

1. **Mr. Flinterman** said that he had obtained funding to hold a retreat for the Committee in The Hague from 24 to 26 April 2013. The topics for discussion at the retreat could include: the comprehensive reporting calendar as set out in the report by the United Nations High Commissioner for Human Rights on strengthening the United Nations human rights treaty body system; a paper on remedies to be prepared by Mr. Salvioli; and amendments to the template for individual communications.
2. While in The Hague, the Committee might also wish to meet with the judges of the International Court of Justice, the International Criminal Court or the International Criminal Tribunal for the former Yugoslavia. The retreat would be an informal opportunity for brainstorming and discussion, and any recommendations would have to be adopted subsequently in a public session. The city authorities had also agreed to host a working dinner with civil society in the city hall. Those members who so wished could also pay a visit to one of the international courts on Saturday, 27 April 2013 after the retreat. He hoped that the idea of such a retreat appealed to Committee members.
3. **Mr. Iwasawa** said that he was very supportive of Mr. Flinterman's initiative but thought that, in the interest of lowering travel costs and improving attendance, it would be better to hold the event from 27 to 29 July 2013, immediately after the 108th session in Geneva.
4. **Mr. O'Flaherty** proposed referring to the event as a "retreat" in order to make it clear that it was not a decision-making occasion; it would be closed to the public and no summary records would be prepared.
5. **Ms. Chanet** asked whether the participants would include those members whose terms would expire at the end of 2012 or the new members who would replace them or both. The discussions should not focus solely on limited issues such as the comprehensive reporting calendar, but should include the future of the Committee and its place within the broader human rights context.
6. **Sir Nigel Rodley** said that it would be preferable for the Committee members to come to the retreat refreshed, rather than after a regular session. It was his understanding that the Government of the Netherlands would cover travel costs.
7. **Mr. Sarsembayev** said that he supported Mr. Iwasawa's suggestion to hold the retreat immediately after the session so that all members could participate. He also suggested that those members who would no longer be on the Committee at the time of the retreat could be invited to attend at their own expense if they so wished.
8. **Mr. O'Flaherty**, supported by **Mr. Rivas Posada**, said that, in his view, the retreat should be exclusively for the members serving at the time it was held.
9. **The Chairperson** said that the timing of the retreat was a matter of considerable concern for those who lived far from the Netherlands.
10. **Mr. Flinterman** confirmed that the retreat was intended for members serving on the Committee as of January 2013, including those newly elected. He agreed with Ms. Chanet that the agenda should be forward-looking and should include issues that would encourage members to attend; the final agenda could be decided at a later time. The Government of the Netherlands had agreed to cover the costs of travel, accommodation and meals for members. In his view, it would be best to hold the retreat outside the framework of the Committee's regular sessions. The proposed dates in April would be an ideal time for a

retreat in the Netherlands, but it was up to the Committee to make the final decision. It was important, however, to finalize the dates well in advance.

11. **Mr. Neuman** said that it might be useful to first collect information on the availability of members. While he favoured a stand-alone retreat rather than one held directly after a session, April might not be the most convenient time.

12. **Mr. Ben Achour** enquired about the dates of the March 2013 session and suggested that the retreat might be held either immediately before or after that session.

13. **Ms. Fox** (Secretary of the Committee) said that the March 2013 session would take place from 11 to 28 March.

14. Following an exchange of views in which **the Chairperson, Sir Nigel Rodley** and **Mr. Flinterman** took part, it was decided that each member would indicate his or her availability before the end of the current session, and on that basis the secretariat would decide on the best possible dates for the retreat.

*Preparation for a day of general discussion on a general comment on article 9 of the Covenant*

15. **Mr. Neuman** (Rapporteur for a general comment on article 9) said that at its previous session the Committee had decided that its next general comment would cover article 9 of the Covenant. For the first time, the Committee would hold a day of general discussion on the subject before it began drafting the general comment in order to enable all civil society organizations and States parties to express their views. He proposed that the discussion should last for half a day, and that the Committee should adopt the informal model for such discussions as used by the Committee on the Elimination of Discrimination against Women. According to that model, rather than paying experts to address the meeting, the Committee would issue a general invitation to submit written papers or to simply participate orally in the discussion, and would set a deadline for submission or confirmation. Once the Committee knew the exact number of submissions and participants, it could decide on the length of time each participant would be allowed to speak, allocating more time to those who submitted papers. The discussion would serve as an opportunity for members to listen to the participants and ask questions rather than debating among themselves. The proposed format would be cost-effective and could be organized in time for the following session.

16. He introduced a document he had prepared on the subject (CCPR/C/105/R.2), noting that it was a preliminary indication of the points to be addressed on the day of general discussion, not an outline of the draft general comment that he would subsequently prepare. He pointed out that the word “Indicators” in paragraph 50 should appear on a separate line as paragraph 51. Given that some members had suggested it would be inappropriate to hold substantive discussions on the general comment during a meeting on working methods, he proposed changing the title of the document from “Draft concept paper of the Human Rights Committee regarding a general comment on article 9 (Liberty and security of person)” to “Day of general discussion regarding a general comment on article 9 (Liberty and security of person)”. He also proposed that, in paragraph 3, the word “Committee” should be changed to “Rapporteur”.

17. **Mr. O’Flaherty** said that he supported the general approach proposed by the Rapporteur, as well as the plan to hold a day or a half-day of general discussion. The civil society contingent should include representatives of national human rights institutions (NHRIs) and academia. Representatives of United Nations special procedures should also be consulted, perhaps at a later stage.

18. He had reservations concerning the Rapporteur’s suggestion that more time should be allocated to representatives who had submitted papers, since important points might also

be made orally. He assumed that the Committee would invite comments from external sources prior to its second reading of the draft general comment.

19. He suggested that the Rapporteur should open the day or half-day of general discussion by introducing the context, objectives and methodology of his concept paper and present an overview of the participants' observations at the end of the discussion.

20. **Mr. Kälin** pointed out that some States had misgivings about the treaty bodies' work on general comments. Although the Committee had a sound legal basis for its work in article 40, paragraph 4, of the Covenant, some States felt that it should focus on the backlog of State party reports and individual communications. Any States parties which attended the day of general discussion might therefore focus on that issue rather than on the general comment.

21. He agreed that NHRI representatives should be invited to participate. However, if bodies that submitted papers were allocated more time, many other participants might be excluded from the discussion, especially if it was limited to three hours. He suggested that interested parties should be invited to submit ideas in writing but that their contributions should not be tied to the day or half-day of general discussion.

22. **Mr. Iwasawa** proposed that the word "day" in paragraph 2 of the concept paper should be replaced by "half-day".

23. **Ms. Chanet** emphasized the importance of convincing States of the need for general comments. If the Committee produced a draft general comment that was highly intellectual and academic, and civil society representatives presented a series of papers during the day of general discussion, participating States would be likely to complain. The Committee should therefore explain why general comments were required, namely, to inform States parties of the type of information they should submit in their reports and of the jurisprudence that would be invoked in the Committee's Views on individual communications.

24. **Mr. Ben Achour** pointed out that the Committee's mandate did not require it to work on behalf of States. The people of his own country, Tunisia, had been subjugated for many years by a repressive dictatorial regime. In that context Tunisian NGOs and human rights organizations had been familiar with the Committee's general comments, which played a major role in the development of a human rights philosophy throughout the world.

25. The Committee should not be intimidated by States but should set aside an entire day for the general discussion. He expected civil society organizations, NHRIs and States parties to submit a large number of papers on the draft general comment.

26. **Mr. Sarsembayev** agreed that general comments served the needs of victims of human rights violations. However, the Committee had been established by the States Members of the United Nations and it would be unwise to behave in a manner that turned them against it. They should be placed on an equal footing with civil society organizations at all events and their views should be taken into account. States would then be more likely to conclude that, while general comments might be bitter pills, they were nevertheless conducive to good health.

27. He suggested that the day of general discussion should be publicized on the Committee's website so that States, NGOs and other treaty bodies were aware of the Committee's aims.

28. **Mr. Bouzid** suggested that the Committee should follow the precedents that had been set during its discussions of previous general comments.

29. **Mr. O'Flaherty** said that the Committee had never before convened a general discussion on a draft general comment. He therefore proposed that it should start with a

half-day discussion and opt for lengthier discussions if necessary, in the light of that precedent. He suggested that the half-day should be reserved for non-State actors and that a separate hour should be reserved subsequently for States.

30. **Sir Nigel Rodley** said that the Committee had consulted outside sources for the first time in connection with general comment No. 31, adopted in 2004, on the nature of the general legal obligation imposed on States parties. Observations had been invited, mainly by civil society organizations, only after the first reading. However, States parties had been invited to submit observations on general comment No. 33, adopted in 2008, on the obligations of States parties under the Optional Protocol and had objected to certain passages after the first reading. Some of their points had been taken into account in the final version.

31. He had reservations about the desirability of inviting States parties to participate in a discussion on the preliminary draft, since their contributions might degenerate into a discussion on the desirability of a general comment. Written and oral contributions by NGOs and scholars were likely to be more focused. He also supported the proposal for a half-day of general discussion.

32. **Mr. Neuman** said that he would find written submissions more useful than oral contributions, which would require note-taking.

33. States had complained, perhaps with some justice, about the tendency of treaty bodies to hold events for civil society organizations to which they were not invited. It was impossible to predict how many States parties would respond to an invitation to attend a general discussion, but they usually made quite short presentations.

34. With regard to the proposal for two half-days of general discussion, the first for civil society and NHRIs and the second for States parties, he pointed out that States might complain about the doubling of the length of the discussion.

35. The discussion on the preliminary version of the general comment would not replace the customary discussion held after the first reading.

36. **Mr. O'Flaherty** said that the involvement of States parties in a general discussion was inherently unpredictable. Some might announce their attendance in advance and many more might turn up unannounced. As noted by Mr. Kälin, they might then take the opportunity to focus on the appropriateness of general comments and the Committee would have no choice but to respond. He was therefore in favour of holding a separate half-day or just a separate hour of discussion with States parties, preferably before the second reading of the draft general comment. NHRIs, on the other hand, should be invited to attend the same discussion session as NGOs.

37. **Mr. Iwasawa** said that it was important to give States parties the opportunity to express their views on general comments. They were accustomed to making brief statements and if they wished to make longer statements, they could submit them in writing. The same applied to civil society organizations. He suggested that the half-day of general discussion should be split into two one-and-a-half-hour sessions.

38. **Mr. Salvioli** said that general comments were not academic exercises. They had a direct impact, through the Committee's interpretation of articles of the Covenant, on States parties' compliance with their obligations. State party involvement in the drafting of general comments should therefore be approached with caution in view of the risk of politicization. Their participation should be deferred, in his view, until after the first reading.

39. **Ms. Waterval** agreed that general comments were drafted not only to clarify States parties' obligations but also to support victims of human rights violations.

40. She was in favour of devoting a whole day to the general discussion. Civil society organizations and NHRIs should be invited to comment on the initial draft and States parties on the version as amended during the first reading.
41. **Mr. Flinterman** said that a first half-day of general discussion should be held for those who dealt with the issues addressed in the draft general comment on a daily basis, either as NGO members or as scholars. States parties should be invited to participate after the Committee's first reading.
42. **The Chairperson** said she took it the Committee agreed that States parties should be given the opportunity to present their views on the draft general comment prior to the second reading.
43. **Ms. Chanet** said that, since many States parties questioned the rationale for general comments, it would be useful to involve them in the drafting process as early as possible so that they witnessed civil society's interest in the Committee's general comments.
44. **Mr. O'Flaherty** said that, while it was tempting to follow the approach suggested by Mr. Flinterman, Ms. Chanet's proposal was perhaps more politically astute. It might be wise to allocate the first two hours of the meeting to discussion with NGOs and the last hour to discussion with States parties. Should the Committee decide to hold a full day of discussion on the general comment, it should allocate no more than two hours to discussion with States parties. The Committee should bear in mind that there would be a qualitative shift in the tone of the meeting when States parties took the floor. They were unlikely to make technical presentations on the content of the general comment, opting rather for political observations about what constituted appropriate action for the Committee to take. The Committee would need to respond to those observations.
45. **Mr. Bouzid** suggested that the Committee should first expand on the draft concept paper, drawing on jurisprudence from concluding observations and Views on individual communications, before hearing the opinions of other stakeholders.
46. **Mr. Rivas Posada** said that inviting States parties to contribute at such an early stage in the process was tantamount to encouraging them to question the Committee's competence. In order to avoid a discussion of that nature and ensure that all participants focused on the matter in hand, the Committee should provide them with a draft document, the content and substance of which should form the basis for their comments.
47. **Mr. Sarsembayev** suggested that the States parties initially invited should be limited to those that had come before the Committee in the previous five years and those that were due to come before it in the following five years.
48. **Sir Nigel Rodley**, supported by **Mr. O'Flaherty**, said that it was necessary to ascertain whether the majority of members considered that States parties should be involved in the general discussion to be held in October 2012.
49. **The Chairperson** asked members to indicate by a show of hands whether they agreed with the proposal to invite States parties to participate in the process of developing the general comment at a later stage, in accordance with its current practice, rather than inviting them to participate in a general discussion in October 2012.
50. *The proposal was adopted by 7 votes to 5, with 2 abstentions.*
51. **The Chairperson** said she took it that the Committee agreed to hold the discussions with civil society in October for a half-day only since only two members had supported the idea of holding a whole day of discussion.
52. *It was so decided.*

53. **Mr. Neuman** requested clarification as to whether the Committee agreed that the concept paper he had drafted could be finalized and published, taking account of the decision to invite civil society and NHRIs as opposed to States parties, to a half day of general discussion in October.
54. **Mr. Flinterman** suggested that members of the academic community should also be invited to the general discussion. In addition, the document should explicitly state that Mr. Neuman was the Rapporteur for the general comment.
55. **Mr. O'Flaherty** said he wondered whether it would be wise to invite the special procedures of the Human Right Council to the discussion.
56. **Mr. Salvioli** considered that the special procedures should indeed be invited. The Working Group on Arbitrary Detention would doubtless have a substantial contribution to make and should be involved in the Committee's discussions from an early stage.
57. **Sir Nigel Rodley** said that, while he would not have hesitated to invite a special rapporteur, a working group would not necessarily contribute in the same way as a special rapporteur. However, on balance, it appeared to be a good idea to invite the special procedures. It would be useful to know whether the Committee on the Elimination of Discrimination against Women had invited the Special Rapporteur on violence against women, its causes and consequences, to discussions in preparation for its general recommendations.
58. **Mr. Flinterman** said that the Committee on the Elimination of Discrimination against Women had developed its general recommendation on violence against women in 1992, before the former Commission on Human Rights had decided in 1994 to appoint a Special Rapporteur on violence against women. During his limited time on that Committee, it had not invited the special procedures to discuss its general recommendations.
59. **Mr. Kälin** said that it would be important for the Committee to have an in-depth discussion with the Working Group on Arbitrary Detention, preferably in a separate one-hour meeting in October or at a subsequent session.
60. **Mr. O'Flaherty** suggested, in that case, that the Committee should consider scheduling a separate meeting to which all the special procedures would be invited in October 2012.
61. **Sir Nigel Rodley** said that it was rather premature to be scheduling meetings in such detail, particularly as it would seem that the Committee would not have a preliminary draft of the general comment at its following session. Given that there were other special procedures that were relevant to article 9 of the Covenant, such as the Working Group on Enforced or Involuntary Disappearances, it would not be feasible to involve all of them in the discussions in October. He proposed that the Bureau, the secretariat and the Rapporteur for the general comment should prepare the schedule for developing the general comment.
62. **The Chairperson** said she took it that the Committee agreed with that proposal.
63. *It was so decided.*
- Mandate of the pre-sessional working group on communications*
64. **The Chairperson** invited the Committee to consider the mandate it wished to give the pre-sessional working group on communications for the 106th session.
65. **Sir Nigel Rodley** said that the pre-sessional working group had envisaged that, if time allowed, it could hold a general discussion on the communications procedure, such as the mandate of the Special Rapporteur on New Communications and Interim Measures and any changes that might be needed in the rules of procedure.

66. **Mr. O'Flaherty** added that, early in its discussions, the pre-sessional working group had talked about the possibility of the plenary mandating it to examine general issues concerning working methods should it run out of work. At a subsequent session, the group had indeed run out of work and had agreed to discuss various elements of procedure relating to communications; to do anything else would be inappropriate given the lack of a mandate from the plenary.

67. **Mr. Iwasawa** agreed that the group could discuss methods of work on communications. However, since any issues relating to general methods of work would have to be discussed in plenary, their discussion in the group would result in duplication of work and should therefore be avoided. If the group did not have sufficient work to fill five days, its session should be reduced to four days.

68. **Ms. Chanet** recalled that, when she had joined the Committee, there had been a single working group that had examined communications in the mornings and methods of work in the afternoon. The system had subsequently changed and the working group now focused on communications. However, the Committee was perfectly entitled to give the working group a mandate to examine general methods of work if it so wished.

69. **Mr. Kälin** said he was not convinced that the working group should revert to the previous system because opinions on methods of work were so disparate that the plenary would duplicate the discussions already held in the group. He agreed that the group should meet for less time if it had insufficient work to fill a week. While it was indeed useful for the group to discuss working methods on communications, that should not be presented as a way of filling time. To do so sent out the wrong message at a time of financial constraints and against the background of the debate about additional resources for treaty bodies.

70. **Mr. Rivas Posada** said that, should the working group ever have time in the future, it should draw up a list of common concerns about communications in general that were often voiced within the group but were never totally resolved owing to a lack of time. They could then be formally communicated to the plenary for examination.

71. **Mr. O'Flaherty** said that the issue was not about filling time but about making the best use of limited resources for the greatest benefit of the Committee. In the context of the working group, it was difficult to know when the work would be finished because it was impossible to predict how long it would take to deal with a given number of communications. In view of that uncertainty, the proposal to examine methods of work had been put forward in order to use the time allocated in the most efficient manner possible.

72. **The Chairperson** said she took it that the Committee agreed that, time permitting, the working group should examine issues relating to communications.

73. *It was so decided.*

*The meeting rose at 6.05 p.m.*