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Summary record of the first part (public)* of the 2899th meeting**

Held at the Palais Wilson, Geneva, on Thursday, 12 July 2012, at 10 a.m.

Chairperson: Ms. Majodina

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- * No summary record was prepared for the second part (closed) of the meeting.
 - ** No summary record was prepared for the 2899th meeting.

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The meeting was called to order at 10.05 a.m.

Organizational and other matters

Discussion of the report by the United Nations High Commissioner for Human Rights on strengthening the human rights treaty body system (document without a symbol, in English only)

1. **The Chairperson** invited Mr. O'Flaherty to report on the discussions recently held in New York on the report by the United Nations High Commissioner for Human Rights on strengthening the human rights treaty body system, which had been distributed to members.
2. **Mr. O'Flaherty** said that several events had been held following the publication of the High Commissioner's report, including an informal meeting of member States in New York on 2 July. On that occasion, Iceland and Ireland, co-facilitators of the Intergovernmental process of the General Assembly (A/RES/66/254), had presented the provisional programme of work for the next steps of the process. In addition to the drafting of informal documents on four aspects of the reform — a comprehensive reporting calendar, reporting obligations, methods of work and implementation capacity — the programme of work included consultations to be held in New York from 16 to 18 July 2012 during which the High Commissioner would present her report. Non-governmental organizations (NGOs) and national human rights institutions would be taking part, as well as the Chairpersons of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee against Torture. Following the consultations, the co-facilitators would draw up a draft final document on the intergovernmental process, to be presented to member States on 30 and 31 July. Work on the draft final document would then continue at informal bilateral meetings with member States. Another informal meeting of member States was planned for 27 August in New York to discuss the draft final document, and a final meeting should take place on 7 September to decide what would be submitted to the sixty-seventh session of the General Assembly. The options currently being considered were to present either a resolution or a report.
3. Speaking on behalf of the Bureau, he said that, owing to the forthcoming consultations in New York, the Bureau had urgently prepared a draft statement on the High Commissioner's report, which it would like to submit for consideration and approval by the Committee so that it could be sent to New York in time for due consideration during the relevant consultations.
4. **The Chairperson** thanked Mr. O'Flaherty for his report and his contribution to the preparation of the draft statement and invited Committee members to comment on the High Commissioner's report prior to proceeding with the consideration of the draft.
5. **Mr. Thelin** recalled that the Committee had decided at its 104th session to ask the General Assembly for temporary additional resources and had specifically requested as much in its annual report, pointing out that the additional funds could be found through a reallocation of existing resources by the Secretary-General of the United Nations or the Office of the High Commissioner for Human Rights. It appeared that the High Commissioner's report did not address allocating resources to the treaty bodies. If that was indeed the case, the Committee should call attention to it and set out its arguments on that issue in the statement.
6. **Mr. Kälén** thanked the Bureau for taking the initiative to draw up the draft statement, as it was important to transmit the Committee's point of view to those taking part in the discussions to be held shortly in New York. The report on strengthening the treaty body system was an excellent initiative for which the High Commissioner should be thanked. Its main strength was that it took stock of the current crisis in the system as a

whole, of which the treaty bodies were not necessarily aware. All treaty bodies had a mounting backlog and, if nothing was done, it would soon be impossible to catch up. The system was also facing a legitimacy crisis. Some States parties, either deliberately or for lack of means, were not cooperating at all with the treaty bodies, while those who strove to fulfil their reporting obligations were increasingly frustrated with the system because of the delay — sometimes of years — between submission of reports and their consideration.

7. Another positive aspect of the High Commissioner's report was that, contrary to previous attempts to reform the treaty body system, the proposed process truly aimed to strengthen the system and not to disrupt its structure. A substantial effort had also been made to cost the proposed measures, estimated at an additional 108 million dollars per year. As to the forthcoming consultations in New York, the worst-case scenario would be that the States approved the merits of the proposed measures but refused to release the additional resources for implementing them, leading inexorably to a weakening of the system. It was therefore critical for the Committee to make it abundantly clear that allocating additional resources was a *sine qua non* for a stronger system. During previous consultations, some States had suggested reducing the time allotted to the dialogue with each State party during consideration of periodic reports to three hours, as was the practice in the universal periodic review. Such proposals, detrimental to the effectiveness of the treaty bodies' work, might be put forward again in the upcoming discussions; the Committee must therefore be on its guard.

8. **Mr. Flinterman** said that he wished to know more about the views on the High Commissioner's report expressed by the States at the 2 July meeting. The Committee should be represented at the consultations of 16 to 18 July, like the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee against Torture, so as to be able to influence a discussion that would be decisive for the rest of the process. Immediate steps should be taken to secure an official invitation. The High Commissioner's report contained many positive elements that should be highlighted in the Committee's statement, which should also acknowledge that the proposals contained in the report had resulted from close consultations with NGOs, treaty bodies, national human rights institutions, and States, and point out that all stakeholders should be a part of the ongoing consultations in New York. The proposal of a comprehensive reporting calendar went to the heart of one of the system's major failings, which persisted because States did not always fulfil their reporting obligations in a timely manner. The practical implications of the proposal undoubtedly required some thought, but it was a crucial point that deserved the Committee's full consideration.

9. **The Chairperson** said that, since the consultations of 16 to 18 July overlapped with the current session, which she was committed to chairing through to the end, she could not represent the Committee in New York.

10. **Mr. Fathalla** said that additional resources, allocated primarily by shuffling resources within the Office of the High Commissioner, an idea the Committee endorsed, should be used first to give the treaty bodies the means to clear the backlog of periodic reports and communications, not to fund the establishment within the Human Rights Treaties Division of a new section charged with harmonization, as proposed in the High Commissioner's report.

11. **Mr. O'Flaherty**, recalling the main points broached at the informal meeting of 2 July, said that opinions had diverged as to the format in which the result of the intergovernmental process should be presented to the General Assembly at its sixty-seventh session. Some were in favour of submitting practical suggestions along with a timetable for implementation, while others recommended submitting a resolution to the General Assembly with the broad outline of the discussions held during the intergovernmental process. There were also differing views on how much importance should be assigned to

the High Commissioner's report in the discussions on treaty body strengthening that would take place at the General Assembly. There were those who felt that other contributions should be taken into account, such as the Secretary-General's reports or proposals by States parties; whereas others thought the discussion should focus exclusively on the High Commissioner's report. Yet others, basically the States who had launched the intergovernmental process, had objected to the fact that the High Commissioner's report contained recommendations while it was supposed only to be a compilation of the various stakeholders' contributions.

12. Some States had argued that increased resources were indispensable to the success of the treaty body strengthening project, while others, among them some very powerful countries, considered that existing resources should suffice for a successful reform. Some States had also mooted the possibility of redistributing resources. The States had also been divided on the participation of other stakeholders, particularly the treaty bodies themselves, in the follow-up to the process. Some were in favour, while others believed that it was for the General Assembly alone to decide, on the basis of the principles set forth in resolution 66/254, while yet others wondered which stakeholders it would really be worth consulting.

13. Personally, he concurred with Mr. Kälin that the system was in crisis. The human rights treaty body strengthening process, launched in 2009, had already resulted in more than 15 consultations and over 100 recommendations, the basis of the High Commissioner's report, which highlighted the essential point that strengthening the system entailed an effort by many actors, including the United Nations agencies, NGOs and international human rights institutions, States forming only one of many stakeholder groups.

14. A comprehensive reporting calendar deserved consideration, but it would be far from simple as it presupposed the allocation of sufficient resources, treaty bodies' acceptance of longer sessions, and States' demonstration of good will. It was disturbing that that proposal was central to the High Commissioner's report because the complexity of its implementation could put other simpler measures at risk. Should the High Commissioner's proposals be rejected because of their political ramifications, the treaty body system could be irretrievably jeopardized.

15. **Mr. Neuman** pointed out that, regarding the redistribution of resources, the High Commissioner's report recommended the establishment of a joint treaty body working group on communications, with each treaty body represented by one member. He considered the idea ill-advised for several reasons. The report's assessment of the resources required for examining communications was based on 160 communications per year, which seemed low given the proliferation of optional protocols and the ever-growing number of communications received by recently established bodies, such as the Committee on the Rights of Persons with Disabilities. The comprehensive reporting calendar would end the practice of State party written replies to the list of issues prior to meetings with the treaty bodies. Replacing written replies with a long oral presentation would encroach upon the time available for dialogue during meetings devoted to the consideration of reports. Given that the treaty body strengthening process had been assigned to the General Assembly, the Committee's annual session in New York presented the perfect opportunity to interact with the delegations at Headquarters. He, for one, hoped that his approaches to the delegation of the United States of America had not been in vain.

16. **Mr. Thelin** advocated caution, because some States parties would be pleased to see the treaty body system collapse. As to the idea of sending a representative of the Committee to the meeting in New York from 16 to 18 July, he proposed sending one of the Vice-Chairpersons if the Chairperson herself was unable to attend; Mr. O'Flaherty would be the ideal candidate for that mission. He concurred with Mr. Neuman that the Committee's sessions in New York offered the ideal opportunity to influence the reform process.

17. He was not very enthusiastic about the proposed comprehensive reporting calendar, which would deprive the Committee of the flexibility it needed to take account of realities. States parties were not all in the same situation; so reporting schedules should therefore be determined on a case-by-case basis as they currently were. He was also concerned about the effect of such a comprehensive calendar on the Committee's follow-up procedures.

18. **Mr. O'Flaherty**, commenting on Mr. Thelin's proposal, said that he saw no point in going to New York if he had not been officially invited.

19. **Mr. Walker** (Office of the United Nations High Commissioner for Human Rights) said that he would transmit the Committee's request. Regarding Mr. Fathalla's concerns, the section tasked with harmonizing, outreach and capacity-building mentioned in section 3.2.5 of the High Commissioner's report already existed; it was simply a matter of pursuing those efforts, not allocating them additional resources.

20. **Sir Nigel Rodley** said he, too, hoped that the Committee would be represented at the forthcoming consultations in New York and that a Vice-Chairperson, in that instance Mr. O'Flaherty, would be an appropriate choice. As to implementing the comprehensive reporting calendar, he feared lest situations that should be only exceptional — namely, studying the human rights situation in a given country in the absence of a report — became commonplace. The word "crisis" was doubtless an exaggeration, but certain difficulties did need to be addressed and one should not stick one's head in the sand. There were two conflicting positions, but the Committee should side with the High Commissioner and support her report.

21. Regarding the proposals for individual communications procedures contained in the report, the Working Group on Communications had considered and supported them all, except for the first, which concerned establishing a joint treaty body working group on communications. That proposal originated with another treaty body and was evidently a variation on an earlier one designed to set up a single body to examine communications. It was unclear how such a joint working group would function and there was nothing to suggest that it would help to clear the backlog of communications. Making jurisprudence more coherent, fostering greater interdependence among the various human rights and aligning methods of work, which the establishment of the joint working group was meant to encourage, were not among the major difficulties the treaty bodies faced. In any event, the tenor of the report suggested that the High Commissioner herself was not convinced of the advisability of the proposal.

22. **Ms. Chanet** said she thought that the process was being pursued more as a fait accompli than a consultation, a case in point being the late announcement of the High Commissioner's presentation of her report in New York. It was clear from the report that the point was not to strengthen the treaty bodies or protect human rights, but instead to improve the management and administration of the system. Yet, at a time when the Office of the High Commissioner was struggling to meet the needs of burgeoning treaty bodies, some proposals, such as the comprehensive reporting calendar, would require additional resources. More generally, the various committees might have points in common, but the treaties were independent and there had been no sign of willingness to create a uniform treaty body system. Each body should be able to define its own policy and be given the means it needed for its implementation, as stipulated in paragraph 36 of the International Covenant on Civil and Political Rights. The Office of the High Commissioner should refrain from making decisions that affected the organization of the Committee's work without the Committee's consent and be more transparent as opposed to the way in which the Committee's next session in New York had been planned.

23. She concurred with Sir Nigel that the proposed joint treaty body working group on communications was merely a more palatable version of a much contested earlier proposal,

and objected to the possibility of communications being examined by members of committees that monitored treaties to which a State was not a party. Such a breach of the principle of confidentiality would more than likely dissuade States parties from recognizing the Committee's authority to examine communications.

24. **Mr. Iwasawa** said that the idea of establishing a joint treaty body working group on communications was particularly disturbing.

25. **The Chairperson** agreed that it was important for the Committee to be represented when the High Commissioner's report was presented in New York. She suggested that Mr. O'Flaherty should represent the Committee, not only on that occasion but at any subsequent relevant meetings. She disagreed with the assertion in the report that if the comprehensive reporting calendar was adopted, there would be less need for treaty bodies to request additional information in their concluding observations. The transfer of responsibility for follow-up to national mechanisms was unfeasible, and she shared Committee members' concerns about the joint working group.

26. She suggested suspending the meeting to give members a few minutes to closely examine the draft preliminary statement of the Human Rights Committee regarding the High Commissioner's report on strengthening human rights treaty bodies.

The meeting was suspended at 11.20 a.m. and resumed at 11.35 a.m.

27. **The Chairperson** invited Committee members to comment on the draft preliminary statement.

Preamble

28. **Mr. Thelin**, referring to the first paragraph of the preamble in which the Committee welcomed the fact that the Secretary-General had acknowledged in the foreword of his report that the treaty body system was "one of the greatest achievements in the history of the global struggle for human rights", proposed adding at the end of the last sentence, which stated that the Committee was "of the view that that the system is in need of reform", the phrase "including secure and robust resourcing".

29. **Mr. Neuman** proposed adding to the first paragraph a sentence stating that the process must uphold the authority of the treaty bodies to decide their own methods of work and rules of procedures and guarantee their independence, as stipulated in their respective instruments, mirroring the High Commissioner's formulation in the introduction of her report. The English version of the draft should be based on the sentence "I trust that this intergovernmental process will embrace a multi-stakeholder approach, respect the powers of the treaty bodies to decide on their own working methods and rules of procedures, and guarantee their independence as defined in the respective treaties."

30. **Mr. Kälin** proposed adding to the first paragraph a sentence highlighting the positive aspects of the High Commissioner's proposals mentioned by Mr. Flinterman, Mr. O'Flaherty and himself. The Committee might also point out that the General Assembly lacked the authority to modify the instruments because only the States parties did. It might also insist on the need to tie reform proposals to the allocation of additional resources so as not to weaken the system.

31. **Sir Nigel Rodley**, supported by **Mr. O'Flaherty**, proposed replacing the last sentence of the first of the two paragraphs by "The committee agrees that the system is in need of strengthening."

32. **Mr. Fathalla**, while agreeing with that proposed wording, proposed supplementing it with the phrase "while taking into account the specificity of each treaty body".

Paragraph 1

33. **Mr. Flinterman** pointed out that, in paragraph 1, the Committee found of interest the proposal for a comprehensive reporting calendar, while noting that its application would require fundamental change in practice and procedure of all relevant actors and stating that it would give the proposal further consideration. He proposed changing the first sentence by replacing “to be of interest” by “addresses a main problem of the treaty body system”.

34. **Mr. Kälin** proposed adding after the second sentence a sentence to read: “At the same time, the Committee would like to highlight that the success of the proposal would depend, first of all, on the availability of adequate additional resources, secondly on the possibility of the treaty body members to assume the additional functions and tasks and on the willingness and ability of States parties to fulfil their obligations in line with this proposal.”

35. **Ms. Chanet** proposed adding at the end of the last sentence “in the light of article 40 (1) (b) of the Covenant”.

36. **Mr. Thelin** proposed leaving the first sentence unchanged but modifying the second sentence so as better to reflect the Committee’s concerns by adding the phrase “some negative changes”.

37. **Sir Nigel Rodley** said that it would be better to use a less forceful adjective than “negative”. The second sentence might read: “It recognizes the merits of the proposal while acknowledging that it would require fundamental changes.”

Paragraph 2

38. **Mr. Kälin** proposed amending the second sentence of the paragraph to read: “The very large majority of recommendations to be found at paragraphs 4.2.1 to 4.2.7 are worthy of serious consideration whereas others (LOIPR procedure, abolition of the follow-up process) appear to raise certain problems.”

39. *Paragraph 2, as amended, was approved.*

Paragraph 3

40. **Mr. O’Flaherty** said that national human rights institutions and NGOs deemed that they had not been sufficiently consulted prior to the inclusion in the report of the recommendations concerning them, which was why paragraph 3 stated that “the recommendation in paragraph 4.2.8 regarding an aligned model of interaction of treaty bodies with civil society and national human rights institutions should be discussed with these actors prior to their implementation”. Moreover, since some national human rights institutions had taken issue with the lack of distinction between them and NGOs, the Committee called for their specificities to be taken into account.

41. **The Chairperson**, replying to a question by Mr. Bouzid, said that she had attended the consultations on the treaty body strengthening process organized by civil society in Pretoria in 2011 but that the High Commissioner had not. She had not been consulted by civil society during the preparation of the final document and it could be surmised that that had also been the case during the Seoul consultations.

42. *Paragraphs 3 and 4 were approved.*

Paragraph 5

43. **Mr. Thelin** pointed out that if in its report the Committee welcomed acknowledgement of the need to strengthen the individual communications procedure, it

should also emphasize the importance of resources, given that a phrase stressing the need to tie reform proposals to the allocation of additional resources had been added to paragraph 1.

44. **Mr. Kälin** said that while the Committee rightly supported the recommendations for adoption of common guidelines for all treaty bodies with the authority to examine complaints, the need to adapt the common guidelines to the specific provisions of each instrument must be stressed.

45. **Ms. Chanet**, concurring with Mr. Kälin, said that since each optional protocol was different, the Committee should specify that the formulation of the common guidelines must take account of the specificities of each instrument. If there was no overlap between the instruments, the idea of common guidelines should be dropped.

46. *Paragraph 5 was approved, as appropriately completed.*

Paragraph 6

47. **Mr. Kälin** noted that the Committee invited the High Commissioner to provide further information concerning the recommendation to establish a joint treaty body working group on communications. The Committee should unequivocally state that the proposal, which included a number of negative points, such as the threat to confidentiality, might be incompatible with some of the treaties.

48. **Ms. Chanet** agreed with Mr. Kälin and proposed adding a phrase emphasizing that such an initiative did not take adequate account of the need for a rigorous juridical approach.

49. **Sir Nigel Rodley** said that the wording of the paragraph had already been extensively discussed and took Committee members' arguments into account. The members of the working group had preferred not to adopt a negative position at that stage. The document was only a draft preliminary statement and Committee members would be free to revisit the matter more fully at a later date.

50. **Mr. O'Flaherty**, concurring with Sir Nigel, said that since almost all treaty bodies had a communications procedure, a joint working group on communications would improve coordination and enable the Committee to transmit its expertise to other bodies.

51. **Mr. Neuman** asked whether it was necessary to modify paragraph 6. The Committee should however assert that establishing a joint working group would be counterproductive, since the advantages needed to outweigh the disadvantages.

52. **Ms. Chanet** said that she maintained her objections. Some member States, including China and the Russian Federation, had already shown hostility to an initiative to intermingle the various instruments. The Committee should stress the need for the initiative to be undertaken with the utmost juridical rigour and regard for the instruments.

53. **Mr. Kälin** said that he did not oppose citing the general policy arguments as well as the legal arguments. The secretariat could endeavour to help treaty bodies with more recent complaints mechanisms to benefit from the Committee's experience. Nonetheless, the High Commissioner's report proposed that the joint working group's recommendations should, for official adoption, be brought to the attention of the treaty body to which the communication had been addressed. A joint working group, on which only one member of the Committee would sit, would be responsible for considering draft decisions and submitting them to the treaty bodies for adoption. Not only were members of the other committees unfamiliar with the Covenant, but he himself, were he a member of the working group, would not presume to interpret the other instruments.

54. **Mr. O'Flaherty** proposed changing the first sentence to read: "The Committee invites the High Commissioner to further consider the proposal for the establishment of a

joint working group, whereby she can demonstrate how its advantages might outweigh its disadvantages.” The rest of the paragraph would remain unchanged.

55. **Sir Nigel Rodley** agreed with Mr. O’Flaherty’s proposal.

56. **Mr. Fathalla** said that he shared the opinion of Mr. Kälin and Ms. Chanet to the effect that the issue was purely juridical. It was impossible for a single working group to deal with treaty bodies the related instruments of which had not all been ratified by the same States, and the Committee should express its concern from the outset.

57. **Ms. Chanet** said that quite a few Committee members deemed the recommendation to be incompatible with the Optional Protocol to the International Covenant on Civil and Political Rights and did not want a middle-of-the-road text. The Committee should declare its concern about the recommendation on the ground that it did not take the specificities of the various instruments into account.

58. **Mr. Bouzid** said that he shared the opinion of Mr. Fathalla, Mr. Kälin and Ms. Chanet.

59. **Mr. O’Flaherty** emphasized that there was no disagreement on the substance within the Committee; it was simply a matter of settling on a text acceptable to all.

60. **The Chairperson** said that discussion of paragraph 6 would be continued. All the proposed or desired changes had been noted and a new draft would be submitted to the Committee at a subsequent meeting.

The first part (public) of the meeting rose at 12.35 p.m.