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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 November 1993, at 10 a.m.

Chairperson: Mr. ALSTON

CONTENTS

GE.93-19518 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS (agenda item 4)(continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of New Zealand concerning articles 1 to 15 (continued) (E/1990/5/Add.5, 11 and 12; HRI/CORE/1/Add.33; E/C.12/WG/1992/CRP.6/Rev.1)

1. Mr. CEAUSU noted that the Committee's guidelines for the presentation of reports requested Governments to indicate the measures taken to promote the participation of all in cultural life. Nevertheless, he had found nothing concerning public libraries, publishers, theatres or cinemas in New Zealand's report (E/1990/5/Add.5). He noted that paragraphs 842-844 of the report gave information on the circumstances in which films, sound recordings, publications and other articles might be prohibited and asked whether there had been any cases of such prohibitions.

2. Mr. BEEBY (New Zealand), replying to questions put by members, began by responding to points raised by Mr. Alvarez Vita. He explained that the question of withdrawing New Zealand's two reservations to the Covenant had not yet been given priority by the Government, but he would inform it that the point had been raised. The right to strike was subject to some limitations: for example, workers in essential services had to give notice of a strike. Such workers included hospital staff. Garbage collectors and grave-diggers were not included, but sewage workers were. Some material on the religious composition of New Zealand's population had already been circulated. The term "heterosexual de facto marriages" referred to unmarried men and women who lived together. For eligibility for social security benefits they were treated as if they were married.

3. In reply to Mr. Grissa's question regarding the Employment Contracts Act 1991 and a possible distinction between contract and non-contract employment, he explained that the only distinction made was between collective and non-collective contracts.

4. As far as authority to secure the implementation of the Covenant in Tokelau was concerned, the Administrator of Tokelau had very broad powers, many of which had been delegated to the political institutions of Tokelau. As a result, those institutions would have a progressively greater say in the way in which the rights set forth in the Covenant were protected.

5. The population of both Tokelau and Niue was mainly Polynesian. As was indicated in paragraph 35 of the report on Niue (E/1990/5/Add.12), the loss of population posed a serious problem. However, that was not the case with Tokelau.

6. Age had been included as a ground for discrimination in the Human Rights Act 1993 because the average age of New Zealand's population was increasing and considerable concern was felt for the elderly.

7. The comments made by the representative of ILO on the Discrimination (Employment and Occupation) Convention (No. 111) and the Employment Policy Convention (No. 122) would be made known to his Government.

8. Mr. Simma had inquired about changes in the composition of the New Zealand Human Rights Commission. A list of the persons involved had been supplied to Mr. Simma, and any further information required could be provided on request.

9. A question had been asked about the compatibility of New Zealand's position on the employment of women in combat positions with articles 2 and 7 of the Covenant. Mr. Simma had asked how, after allowing for the fact that the corresponding provisions of the Convention on the Elimination of All Forms of Discrimination against Women were more specific and had been the subject of a reservation by New Zealand, the New Zealand Government justified discrimination in that area under the Covenant, which, while it might be more general, contained, in article 2, no qualification of the prohibition of discrimination on the ground of sex. Mr. Simma had further asked whether the New Zealand Government did not take the Covenant, being a very general instrument, less seriously than it took the Convention on the Elimination of All Forms of Discrimination against Women and other more specific instruments.

10. It was by no means a straightforward matter to reconcile avowedly discriminatory provisions relating to employment in the armed forces with the broad non-discrimination provided for in article 2 and the specific provisions of article 7 of the Covenant. However, his Government had had some regard to practice concerning the employment of women in combat positions in virtually all countries at the time when the Covenant had been adopted in 1966. His Government also placed some reliance on the absence of a precise obligation in article 7 not to foreclose any type of employment for men or women. Article 2 of the Covenant prohibited discrimination with regard to the exercise of the rights enunciated, but the Covenant did not enunciate a right for men and women to have full access to all employment positions without regard to gender. That stood in contrast to article 11 (1)(b) of the Convention on the Elimination of All Forms of Discrimination against Women, which required the State to guarantee the same employment opportunities and in respect of which New Zealand had felt itself obliged to enter a reservation. It was therefore necessary to look at the precise terms of the Covenant and also at the practice of a very large number of States which maintained that kind of distinction, even if they were, like New Zealand, debating the continued need for it. The New Zealand Government did not perceive any great difficulty in reconciling its approach to the issue with its undoubted commitments under the Covenant, which it certainly took seriously. It entered reservations only when they seemed to be strictly necessary.

11. With reference to the ILO Minimum Wage-Fixing Convention, 1928 (No. 26), a question had been asked concerning the inflation rate since 1990, so that the Committee could obtain a better picture of the extent to which the failure to raise the minimum wage had hurt New Zealanders. The cumulative change in the consumer price index between September 1990 and September 1993 had been 4.8 per cent - 2.8 per cent in 1991, 0.9 per cent in 1992, and 1.3 per cent up to September 1993. More specific material was available if needed.

12. A question had also been asked concerning the ILO Workman's Compensation (Occupational Diseases) Convention, 1934 (No. 42) and, by extension, article 7 of the Covenant. In New Zealand law the burden of proof of the origin of an occupational disease fell on the worker, a situation which had been seen as running counter to the spirit of article 7 of the Covenant. In that connection his Government took the view that the requirements of article 7 were not breached by the relevant provisions of the Accident Rehabilitation and Compensation Insurance Act 1992. It had been suggested that, if under article 7 of the Covenant the State had an obligation to ensure safe and healthy conditions for the worker, it should not be left to the worker to show that the disease had originated in his employment. In the New Zealand Government's view such an interpretation amounted to reading too much into article 7. New Zealand had already described the ways in which its legislation had provided mechanisms to ensure the safety of the workplace, and the enforcement of that legislation was provided for by the Health and Safety in Employment Act 1992, some material on which had been given in response to issue No. 22. Thus New Zealand was substantially fulfilling its obligation under article 7 (b) of the Covenant, which did not state that a worker had no duty to substantiate a claim that a disease had originated in his place of employment.

13. A comparable point had been raised with regard to the ILO Workmen's Compensation (Accidents) Convention, 1925 (No. 17) and to the fact that the ILO Committee of Experts had questioned the New Zealand law under which victims of industrial accidents were required to pay part of their medical costs. However, since article 7 of the Covenant contained no reference to compensation for accidents, there was no discrepancy.

14. It had been asked why children under 15 (now 16) were allowed to leave school in order to attend ACCESS courses instead of completing their school studies. The number of children concerned amounted to no more than 100 per year, and they were pupils who were not benefiting from school and who were expected to do better in more specialized training. The qualifications issued by schools not yet integrated into the State system were recognized on the same basis as those of State schools. All major Maori schools were integrated into the national system, except for five newly established private schools, which intended to integrate at an early date.

15. A request had been made for further statistics to show the degree to which women were still disadvantaged, with particular reference to issues Nos. 21 and 23. The key statistic was the ratio of women's to men's average hourly earnings. In August 1993 that had been 81.3 per cent. The most significant progress in closing the gap had been made between the adoption of the Equal Pay Act in 1972, when the ratio had been 69.9 per cent, and 1979, when it had been 79.2 per cent. By 1987 it had reached 80 per cent and had scarcely altered over the past five years. That strongly suggested that more still had to be done. Another important statistic was the ratio of women's to men's average total weekly earnings, including overtime. Since 1987 that ratio had fluctuated between 72.4 per cent and 74.7 per cent. The gap was wider because on average women worked shorter hours and did less overtime than men. In every sector of industry there was a gap between men's and women's average ordinary-time hourly earnings, but there were significant differences in the size of the gap. In May 1993 industries with

lower-than-average differences had been construction, forestry and mining, the differences in the business and financial services sectors being greater. The differences were probably due mainly to occupational composition. Further information on men's and women's earnings was to be found in tables available to those members of the Committee who wished to see them. While a discrepancy had still existed in 1986, the differential in each occupation set out in the tables had been reduced, except for university lecturers and electricians. The Department of Statistics was about to publish a full profile on women based on the 1991 census, which should be ready for June 1994.

16. The reasons for the disparity in earnings were many, as had been noted in the response to issue No. 31. The factors mentioned there could explain at least two thirds of the gender differences in pay. The unexplained portion of the gender gap was usually attributed to gender discrimination in the labour market. As had been noted in the response to issue No. 21, the Government was closely monitoring progress in that field. The questions raised would certainly be borne in mind when New Zealand submitted its next report under the Convention on the Elimination of All Forms of Discrimination against Women. A copy of New Zealand's latest report under that instrument, which contained a great deal of further information on the steps being taken, was available.

17. An error had been made in the presentation of some supplementary material. The table headed "Total income by sex for population resident in New Zealand aged 15 years or over at the 1991 census"; the figure at the foot of the first column for males (126,321) was incorrect, the correct figure being 1,260,231. However, there was no mistake in the material headed "Article 13 and the right to education - average salaries for secondary teachers", where, for 1981 a figure of 18,191 was given for male pre-school teachers as compared with a figure of 8,000 for females; in contrast the figures for 1986 showed 11,000 for males and almost exactly the same figure for females. Those figures were correct. It was suspected that the oddity was due to the fact that in 1981 there had been very few male pre-primary teachers.

18. A series of questions had been put in connection with paragraph 329 of the report. He informed the Committee that the presiding officers of the Family Court and the Youth Court were appointed on the basis of their specialized knowledge, and that they also received in-service training, as well as being able to call on assistance from experts in a wide range of fields. Summarizing the main changes introduced by the Children, Young Persons and Their Families Act 1989, he said that it had in particular separated care and protection from youth justice. It had also introduced family group conferences as a means of involving the wider family group in resolving problems, and had recognized the need for a culture-sensitive approach. Special principles relating to the care and protection of young people had been established and special provisions introduced to give the Family Court a wider range of orders to support children and young people.

19. The new Act gave greater status to approved voluntary-sector organizations and introduced a new philosophy, by recognizing the vital role that the family should play.

20. Regarding the protection afforded by the law to children who were taken from their families, he said that the Children, Young Persons and Their Families Act 1989 covered all situations in which children might be removed from their family, and provided for care in a new family or family-like setting. As to what happened to children whose parents separated, and whether the interests of children were given priority, he said that when parents separated, parental responsibility could be vested in both or either of the parents, on a voluntary basis or by a court order. In deciding custody and access issues, courts always placed the interests of children first. He also said that there was currently only one ground for divorce, and that the notion of fault no longer existed in the field of divorce.

21. One member of the Committee had asked why, if the Government was satisfied that it provided an adequate safety net for vulnerable groups, there had been reports, referred to in issue No. 38, that hunger had become more widespread and that increasing numbers of people were seeking assistance outside the net of government protection, from food banks and private voluntary organizations. The process of economic restructuring had increased pressure on both State and voluntary programmes. The increasing demands made on both programmes did not necessarily indicate a deficiency in State coverage but rather reflected the fact that people turned to one or other programme for a variety of reasons. The increasing burden on tax-funded programmes had led successive Governments to retarget them towards those most in need. The mix between government and voluntary programmes indicated that there were some situations in which the State was not best placed to assist people. Government expenditure on special benefits and Special Needs Grants had increased considerably in recent years, and in response to pressure from church groups, the Government had relaxed the criteria for awarding Special Needs Grants.

22. Unfortunately, voluntary groups did not quantify the levels of assistance they provided, as they kept no statistics. The Government was currently working to help them to improve their data collection in order better to be able to decide on any necessary consequent changes to State coverage.

23. With reference to article 13 of the Covenant, the delegation had been asked what the typical cost of acquiring a tertiary education qualification was, what proportion was borne by the State and by the student, and what the cost was to a foreign student. Typical annual tuition fees at a New Zealand tertiary education establishment were between $NZ 8,000 and 10,000, all of which would have to be paid by a foreign student. A New Zealand student with permanent residence would have to pay between $NZ 1,500 and 2,000, the remaining 85 per cent being met by the State. As to the definition of a foreign student, referred to in paragraph 599 of the report, he said that it was no longer section 7, but section 11 of the Immigration Act 1987 that applied. That section temporarily exempted certain categories, such as diplomatic personnel, foreign military personnel and seafarers from the requirement of an immigration permit. The gist of the provisions relating to the enrolment of foreign students in State schools was that they could only be enrolled with the consent of the board of the school, unless they came within a special category of foreign students entitled to enrol by declaration of the Minister of Education. Foreign students would not receive an education in a

State school unless they paid the fees, although the students entitled by declaration of the Minister to enrol could be exempted from paying fees under section 4 (c) of the Immigration Act 1987.

24. Regarding the availability of scholarships for the children of non-New Zealand citizens, he said that all New Zealand citizens and permanent residents had access to tuition subsidies, student allowances and student loans, depending on certain criteria. In addition, under its official development assistance programme, New Zealand provided both full grants covering the cost of travel, tuition and accommodation and scholarships covering tuition fees. In March 1993 there had been 656 tertiary education students studying on full grants and in 1992, 1,272 tertiary education students had received fee scholarships.

25. Turning to the provisions for adult education within the reformed educational system, he said that a ministerial advisory group on non-formal education had led to the establishment of the National Resource Centre for Adult Education and Community Learning, under the Adult Education Amendment Act 1990, to provide for lifelong learning. Community Learning Aotearoa New Zealand was the advisory committee set up to provide advice on policy, and to recommend the distribution of grants from a fund of $NZ 200,000 per year. The fund was used to provide parent support and education, for community groups working in prisons and for community education projects outside educational institutions.

26. Although the Education Act 1964 guaranteed a free education in State schools up to the age of 19, a number of schools enrolled people over that age to allow them to complete or extend their educational qualifications, and received full government grants for them. The Correspondence School had over 9,000 adult students on its roll, most of whom were pursuing study courses above primary level, although many were completing basic education. One of the goals of the ACCESS Scheme for training unemployed people was to enhance individuals' ability to enter or re-enter the workforce by improving their basic work skills. Organizers of ACCESS courses were encouraged to build in literacy training as part of a course's objectives. ACCESS was being replaced by the Training Opportunities Scheme.

27. With a Government resource package of $NZ 10 million in 1988, polytechnics were able to initiate bridging courses for students who had left school but who had not attained adequate standards to pursue further training. Bridging courses were designed to remedy educational deficiencies by providing specialized study, usually in English, mathematics and science with the aim of helping students reach the levels necessary for tertiary education and training in a specific field.

28. As to whether non-New Zealand citizens enjoyed the same economic, social and cultural rights as New Zealand citizens and whether they were entitled to the same welfare, health and education benefits, he said that the Human Rights Act 1993 and the Bill of Rights Act 1990 applied to all persons living in New Zealand regardless of their nationality and of why they were there. Entitlements under health, social security and education legislation applied to all persons legally resident in New Zealand.

29. In reply to the question concerning the right to abortion and whether doctors and medical personnel might refuse to perform or assist an abortion for reasons of conscience, he said that abortions could be performed in New Zealand on certain grounds, laid down in the Crimes Act and in the Sterilization and Abortion Act 1977; the latter piece of legislation specifically recognized the right of medical practitioners and nurses not to be obliged to perform an abortion.

30. Turning to the question of euthanasia, he said that there was no provision in New Zealand's legislation authorizing either voluntary or involuntary euthanasia. A person who performed euthanasia would be treated as having committed murder, or if he assisted a person in committing voluntary euthanasia, as having aided and abetted suicide, although a person who attempted suicide was not himself liable to prosecution. Section 11 of the Bill of Rights gave anyone the right to refuse medical treatment; the courts had not yet settled the issue of the possible criminal liability of a doctor who complied with a request from a competent patient that life support systems should be withdrawn. The debate on that issue was still under way.

31. A question had been put in connection with paragraph 842 of the report, concerning how pornographic material was distinguished from material of artistic merit. Since the report had been submitted, there had been a change with the adoption of the Film, Video and Publications Classification Act 1993, which had replaced previous separate legislation by a unified act covering film, video and publications. The Act had also established a new Office for film and literary classification, and revised the criteria on which prosecutions for obscenity could be brought. The basic legal yardstick was whether the material was "objectionable", i.e. whether it was "likely to be injurious to the public good". Some material was objectionable per se, such as material that promoted torture or the sexual exploitation of children. The film censor had regularly excised violent scenes from films or even banned whole films on the basis of that legislation.

32. A question had been put in connection with paragraph 39 of the report as to whether the minimum age for workers, which was 15, was not too low and whether it did not conflict with the right to an education. It was true that a large proportion of young people below the age of 19 worked, a fact which might interfere with their studies. In addition, a large proportion of Maori seem to leave school early, and a question had been raised as to the reasons for the particularly acute problem of unemployment among Maori, referred to in paragraph 56 of the report. Since the report, the minimum age for workers had been raised to 16, and consideration was being given to raising it still further. Moreover, the Government had devoted efforts to encouraging more people to enter higher education, and had met with a degree of success, including among Maori.

33. Regarding Maori unemployment, it was an unpalatable fact that Maori were over-represented among the poor, the ill, the less educated, the unemployed and the prison population. Any Government faced with those facts would have to admit that all was not well with New Zealand society. The causes were quite complex, and regardless of their political colouring, successive Governments had made efforts to address them through a wide range of targeted policies, which had produced results that gave grounds for some satisfaction.

In connection with paragraph 104 of the report, he had been asked whether public servants who considered that they had been wrongfully dismissed could take the matter to the courts. As a public servant himself, he was pleased to say that they could.

34. Regarding the conciliation procedure in respect of complaints of discrimination, referred to in paragraph 66 of document HRI/CORE/1/Add.33, he said that there was no firm deadline after which the conciliation procedure had to be abandoned in favour of formal legal procedure. The decision to cease attempts at conciliation and take a matter before the Complaints Review Tribunal depended to a large degree on the discretion of the Proceedings Commissioner, who was a member of the Human Rights Commission.

35. As to whether minimum conditions of employment were still respected under the Employment Contracts Act 1991, he said that the Act contained certain statutory provisions regarding the minimum wage, protection from unlawful deductions, 11 days' paid public holiday per year, 3 weeks' paid annual leave, 5 days' special leave, equal pay for men and women, access to dispute settlement procedure and reasonable limitations on working hours. However, there was no minimum wage for persons aged under 20. It was not possible voluntarily to work for less than the minimum wage. It was clear from paragraph 184 of the report that every worker in New Zealand had the right to join a trade union. No restriction on that right had been introduced by the Employment Contracts Act 1991.

36. Regarding the more general question of the problems faced by individual citizens of New Zealand in the fields of health, welfare or pensions, he repeated that the Government's prime concern was to target the vulnerable, those who were dependent on benefits or who received low incomes. Those categories were entitled to additional assistance in meeting health costs, through the Community Services Card scheme.

37. A question had been put regarding the rather high minimum requirement of 1,000 members to form a trade union, mentioned in paragraph 192 of the report. The relevant legislation had since been changed, and under the Employment Contracts Act, there was no longer any numerical requirement in order to form a trade union.

38. Regarding the meaning of the term family, raised in issue No. 29, and the replies provided in paragraphs 303, 310 and 328 of the report, he pointed out that the concept of family could vary not only from one country to another, but also within a particular country and over a period of time. In New Zealand, the concept of family held by the Maori had always been extensive, involving the obligation of all members of the family group to care and support each other. As an illustration, he said that there were very few Maori in old peoples homes. The non-Maori concept of the family was rather narrower, and had changed in recent times. The idea that the family needed to be protected still lay at the heart of the law, although it had been recognized that it was a different type of family that required protection. In particular, the emergence of single parent families had been recognized. Paragraph 310 of the report made it clear that the Status of Children Act 1969 placed all children on an equal footing for the purposes of New Zealand law, irrespective of whether the father and mother were or had been married.

39. With regard to the rather limited provisions made for leave for parents when a child was born, described in paragraphs 303 to 305 of the report, he recognized that they did not measure up to the standards set by article 10 (2) of the Covenant, which was why New Zealand maintained its reservation on the full implementation of that article.

40. Regarding the means by which the economic, social and cultural rights of single mothers and their children were protected, and whether there was a problem of child abandonment on account of economic hardship, he said that single parents who were unable to work were eligible for the Domestic Purposes Benefit, as well as for other benefits. Both primary and secondary education were of course free.

41. There was no regulated rental sector for the less favoured sectors of the population. Instead, the Government gave assistance through targeted accommodation supplements for those in need.

42. Finally, on the question of public libraries, theatres and cinemas, which were given scant coverage in the report, he said that the system of public libraries in New Zealand was extremely developed and widely used, with one of the highest lending rates in the world. In 1992, public authority libraries had held a book stock of 8.5 million volumes. There were also 48 libraries in tertiary education establishments, including the 7 university libraries. He regretted that the report did not contain more information on the theatre and cinema in New Zealand, which were a vital and flourishing part of the country's social life.

43. The CHAIRPERSON thanked the representative of New Zealand for his presentation and invited members to make follow-up comments and requests for elucidation, refraining, however, from raising any new questions.

44. Mr. GRISSA said that he wished to make a general comment on the Committee's experience in connection with the New Zealand report. The report had originally been submitted in 1990 and, in view of the considerable changes in legislation which had taken place in the intervening period, its validity in many important respects was now doubtful. In other words, the report was out of date, and he wondered whether the Committee should not make special provision for such cases.

45. The CHAIRPERSON recalled that the New Zealand report had been scheduled for consideration in 1992 but that the Government had, at the last moment, requested its consideration to be deferred for two sessions.

46. Mrs. JIMENEZ BOUTRAGUEÑO congratulated the representative of New Zealand on his answers which had been highly pertinent and, so far as the topic of discrimination was concerned, exemplary. She wondered whether she had understood correctly that divorce could not be obtained in New Zealand by mutual consent. In a country whose population included many agnostics, such a restriction would seem inappropriate. She had some further questions to ask on the subject of cultural rights, especially in connection with the elderly, but she proposed to raise them in private conversation.

47. Mr. SIMMA said that he, too, had been very impressed by the wealth and precision of the information presented. As a general comment, directed not so much at New Zealand in particular as at the Committee's experience with regard to most of the industrialized countries, he wondered whether the Covenant, being in the nature of an umbrella instrument with relatively little operational substance, could hope to command as much attention as more specific instruments adopted in other forums. So far as the New Zealand report was concerned, that question arose particularly in connection with legislation on women in combat roles and on industrial accidents.

48. Noting that, speaking on the subject of single mothers, the representative of New Zealand had said that primary and secondary education in New Zealand were "of course" free, he recalled that tertiary education, too, had been free until recently. Was there any intention on the part of the New Zealand Government to introduce fee payment for primary and secondary education or to recover some of the costs of schooling from children or their parents? Lastly, he asked whether the representative of New Zealand would exclude the possibility of considerable changes being introduced in the system of welfare entitlements with a view to deterring individuals from applying for public welfare benefits and directing them towards private assistance systems.

49. Mr. CEAUSU also thanked the representative of New Zealand for answering almost all of the questions addressed to him. He shared the concern expressed by Mr. Grissa and suggested that, where a Government was not in a position to submit an updated report, the Chairperson might invite the representative making the oral presentation to indicate any important changes and to furnish updated figures for the main indicators, thus avoiding a situation in which members formulated their comments on the basis of information that was no longer valid.

50. The CHAIRPERSON said that the suggestion just made was already reflected in section III of the Committee's report on its seventh session (E/1993/22).

51. Mr. ALVAREZ VITA also thanked the representative of New Zealand for his excellent presentation and expressed satisfaction with the answers given to virtually all his questions.

52. Mr. BADAWI also thanked the New Zealand representative for his very lucid answers. The only follow-up question he wished to ask related to the absence of a specified time limit within which steps had to be taken to redress a grievance. What guarantee was there that something would be done? Was it entirely up to the Commissioner to institute proceedings, or could the aggrieved person do so?

53. Mr. BEEBY (New Zealand), taking up the last point first, said that while it was correct that there was no specified time limit for the conclusion of conciliation procedures and that it was in the hands of the Commissioner to institute proceedings, the option to do so was always open to the aggrieved person subject to any conciliation procedures still in progress. Replying to the point raised by Mrs. Jiménez Butragueño on the subject of divorce, he said that a confusion had no doubt arisen owing to an interpretation error;

fault had been the basis for divorce proceedings in the past, but that legislation had now been repealed and the only ground for divorce was the irreconcilable breakdown of the marriage.

54. Two members had raised the issue of the time-lag between the submission of the report and its presentation. While fully agreeing that the situation was not in principle desirable, he believed that his Government had had good reason for requesting a deferral. In his oral presentation, the text of which had been circulated to all members, he had done his best to outline the major changes that had taken place.

55. Replying to the general comment made by Mr. Simma, he said that although the obligations set forth in the Covenant, being of a general nature, might perhaps be more difficult to grapple with than more specific instruments such as the ILO Conventions, he did not believe there was any risk of less attention being paid to such obligations in his country. On the question regarding the Government's intentions to introduce fees for primary or secondary education or to recover the costs of schooling from parents, the mere suggestion would give rise to a considerable outcry and he would be very surprised indeed if it were even mooted. As for higher education, he did not think it had been 100 per cent free since the Second World War, although it was true that fees had been increased in recent years. Lastly, he entirely excluded the possibility of changes being made in Government assistance levels and saw no evidence of any intention to direct applicants to private sources.

56. The CHAIRPERSON said that, there being no further questions, the Committee had concluded its consideration of the initial report submitted by New Zealand. On behalf of the Committee, he thanked the delegation of New Zealand for its presentation and for the efforts it had made to supply additional information both orally and in writing. According to established procedure, the Committee would, in private session, consider a set of concluding observations to be formally adopted at a subsequent public meeting.

57. Mr. Beeby, Mr. Hunt and Ms. Fearnley (New Zealand) withdrew.

COMMUNICATION FROM THE PERMANENT MISSION OF CANADA

58. The CHAIRPERSON drew attention to a communication dated 6 July 1993 from the Permanent Mission of Canada to the Office of the United Nations at Geneva which had been forwarded to him by the Centre for Human Rights, and read out the pertinent parts of the communication, as follows:

> "As a strong supporter of the United Nations Human Rights Treaty monitoring system, we have always encouraged the efforts of the Committee to improve its working methods. In this spirit, Canada agreed to the Committee's decision to entertain informal oral presentations from two Canadian non-governmental organizations, notwithstanding the last-minute character of that decision.
>
> "The Government of Canada understands that an important objective of this new procedure is to enable the Committee to better evaluate non-governmental views and to improve the quality of its dialogue with

States parties. This objective does not, however, appear to have been achieved in the present case. The Committee's concluding observations appear rather to reflect uncritical acceptance of certain assertions by the non-governmental organizations, while not taking into account key aspects of the government presentations.

"For example, the Committee noted at pages 3 and 4 of its observations that there seemed to have been no measurable progress in alleviating poverty over the last decade. In its presentation, the Canadian delegation outlined a number of measures which had been taken, including the fact that federal cost sharing for the Canada assistance plan will increase to $7.3 billion this year, rising at a rate five times greater than for federal program expenditures as a whole. The Committee made no reference to these measures and instead implied that the Government of Canada was unconcerned about the continued existence of poverty in Canada.

"The Committee also said at page 4 that the State party outlined no measure aimed at combating poverty among children. In its presentation, the Canadian delegation outlined in great detail the measures proposed under brighter futures. This is a significant program providing an additional $2.6 billion over five years aimed at improving conditions for Canadian children and one which UNICEF has called '... one of the best examples of a national plan of action prepared in the industrial countries'.

"With a view to improving its procedure in light of this experience, the Committee may wish in future to request that non-governmental organizations provide copies of their submissions well in advance of their appearance. This would facilitate the Committee's efforts to assess fully the material before it and enable States parties to provide considered comments (an especially important factor in Canada's case where it must consult as many as twelve provincial and territorial governments on matters addressed in the Covenant). Such an approach would assist the Committee in engaging both non-governmental organizations and States parties in a serious dialogue. Furthermore, a more systematic approach to non-governmental organization participation will become essential as larger numbers of non-governmental organizations express interest in providing views to the Committee.

"The Government of Canada is also concerned about the procedures followed in respect to the release of the Committee's concluding observations. Prominent and extensive reporting on those observations appeared in the Canadian media on 28 May 1993. On the same date, a member of the Committee commented in detail on the contents of those observations in an interview on Canadian national radio. In those circumstances, Canadian officials were compelled to comment publicly on a 'draft' version of the Committee's observations obtained from a Canadian newspaper - a document the status of which it had not had the opportunity to ascertain from United Nations officials.

"On contacting the Centre for Human Rights on 1 June 1993, the Permanent Mission of Canada was advised that, under normal Committee procedures, the concluding observations adopted in private session would not have been made public until a formal copy was communicated to the State party.

"The Permanent Mission of Canada requests that this note be transmitted to the Chairman of the Committee and to the Committee at its next session, and urges the Committee to clarify its procedures regarding publication of its concluding observations on periodic reports submitted by States parties to the Covenant on Economic, Social and Cultural Rights. Canada remains committed to maintaining a full and effective dialogue with the Committee on the fulfilment of its obligations under the Covenant."

59. The communication raised three separate issues, the first being whether the Committee's concluding observations had taken sufficient account of the Canadian Government's submissions. In his view, divergencies of opinion between the Committee and individual Governments were inevitable in some instances. Of the observations referred to in the communication, the first, relating to the alleviation of poverty over the past decade, was very general in nature. The second point, relating to programmes for children, was perhaps a valid one, but it should be borne in mind that the Committee's concluding observations did not purport to be comprehensive and could not be expected to cover all aspects of a problem.

60. The second issue related to the manner in which submissions by non-governmental organizations should be dealt with in the future. While the Committee already made a practice of requesting non-governmental organizations to make information available in writing wherever possible, a slight amendment of the procedure might perhaps be made by indicating that the written information should be provided as early as possible and that it would be forwarded to Governments as soon as it was received.

61. The third issue related to procedures followed with regard to the release of the Committee's concluding observations. There, the Canadian Government certainly had a point. In the first place, he regretted having to say that the Centre for Human Rights had misinformed the Permanent Mission of Canada by saying that, under normal Committee procedures, the concluding observations adopted in private session would not have been made public until a formal copy was communicated to the State party. It was a matter of simple logic that when the Committee adopted its concluding observations in public session, the document containing those observations became a public document and had to be released forthwith.

62. On the final Friday of the eighth session he had specifically asked the Secretariat to prepare letters to go to each Permanent Mission in relation to which concluding observations had been adopted and to send those letters out by fax that day. The letters had been ready and signed at about noon on Friday, 28 May 1993 but he regretted having to say that no fax had gone out until the following Tuesday, 1 May 1993. The Centre for Human Rights had thus failed to carry out the clear instructions he had given, and he had now indicated that such instructions had to be followed in future. It was

inappropriate that member States should not receive at the earliest possible moment the concluding observations adopted in their respect. The fax was by now a well-established method of communication and there was no reason why the Centre for Human Rights should be reluctant to use it.

63. It was true that the Committee's comments had given rise to extensive debate in the Canadian media. The Prime Minister of Canada had answered questions in Parliament relating to the concluding observations, and the matter had assumed quite significant proportions. The Committee itself had received letters from various organizations congratulating it on its handling of the Canadian report. Under the circumstances, it was inevitable that the matter should have been a somewhat sensitive one for the Canadian Government. His own view, which he had expressed in public session at the World Conference on Human Rights, was that the true purpose of the dialogue which took place in the Committee was to stimulate national discussion of important issues rather than to hand down judgements. From that point of view, the discussion which had taken place in Canada was the most appropriate achievement that the Committee could hope for and, moreover, one that reflected very well on the Canadian Government. In essence, he felt that the letter should be regarded as highly positive.

64. Mr. GRISSA said that the Canadian Government's letter referred to contact with the media by one member of the Committee. He questioned whether it was right for individual members to have such contacts.

65. Mr. TEXIER said he thought that the letter could be viewed in a very positive light; it would be a matter of pride for the Committee if all States parties took its findings so seriously. The Committee should reply to the letter, at the same time drawing some conclusions about its procedures and taking steps to amend them somewhat if necessary. The allotment of a half day, at the current session, for discussion with non-governmental organizations was a positive step, but it was essential to find the right procedure in order to ensure not only that an NGO had an opportunity to comment orally on the latest developments but also that the State party's representatives had a reasonable chance to respond.

66. With regard to the Committee's concluding observations, it might seem unfortunate that the press obtained them before the Government concerned. As far as the Committee was concerned, however, its findings, once issued, were in the public domain - a point which should perhaps be stressed to the State party.

67. There might indeed be substance in some of the criticisms voiced in the letter. Perhaps, therefore, the Committee, in its reply, could give some assurances and explanations in that regard, and in future be more rigorous in preparing its findings.

68. Mr. ALVAREZ VITA said that he viewed the Canadian Government's letter as a positive response, showing that the Government, unlike those of some countries, took an interest in the Committee's work and views. He was not sure whether the statements to the media by a Committee member had been made before or after the Committee had published its concluding observations. In any case, although the latter were drafted in closed session, the procedure

was not intended to have the degree of confidentiality found, for example, in the Commission on Human Rights proceedings under Economic and Social Council resolution 1503 (XLVIII). He did not think, therefore, that the Committee was as blameworthy as had seemingly been suggested. What had happened in the case of Canada was surely part of the price a State could expect to pay for being a party to the Covenant.

69. With regard to the communication of concluding observations, it might be as well not to rely too much on modern telecommunications. Perhaps the Committee could inform a State party when the relevant concluding observations were to be published; the Government could then arrange, probably through its Permanent Mission at Geneva, to learn those observations as soon as they were made known. It would also be useful for the Committee to hold press conferences, since greater media coverage would benefit not only the Committee but those States parties that strove to collaborate with it, as well as sanctioning those that did not.

70. The CHAIRPERSON, referring to the last-mentioned point, said that the action recently decided upon by the Committee with regard to countries failing to report on time had been effective, to judge from the reports that had arrived during the current session.

71. Mr. SIMMA said that, as the Committee member referred to in the Canadian Government's letter, he disagreed with Mr. Grissa about speaking to the media. Committee members should be in a position to answer media questions, as he had done when approached - he himself had not sought any publicity. His only misgivings about what had occurred stemmed from the fact that the journalists' questions were evidently based on a text inexplicably different from that issued by the Committee.

72. With regard to the points raised in the letter, he agreed that the Committee should endeavour to obtain NGOs' submissions as far in advance as possible, in order that the Government concerned could consider them and respond in good time.

73. In his view, the criticism about the Committee's implied view of poverty in Canada could be refuted; indeed, although the Government, in its letter, referred to a number of measures taken, it did not thereby deny the continued existence of poverty in Canada. If the Committee was objective in its findings, it could not be responsible for the inference put on them by others.

74. He did feel, however, as the Country Rapporteur concerned, that the point about the Committee's procedure in handling submissions by non-governmental organizations might be valid. Perhaps the procedure could have been more balanced; but he would not comment further for the present.

75. Mr. ALVAREZ VITA said that at no time had he intended to imply that Mr. Simma, when speaking to the media, had been seeking publicity.

76. Mr. BADAWI said that he was not clear about the suggestions regarding the procedure for dealing with NGOs' submissions, since an NGO, even if it had made an early written submission, might wish to comment later in reaction to

events occurring after the State party's report had been submitted. The question was how, if it did so, the Government concerned could be enabled to make a timely response.

77. The CHAIRPERSON said that, as he saw it, non-governmental organizations should be asked to provide their submissions in writing well in advance, but should not thereby be precluded from making additional oral submissions.

78. Mr. WIMER ZAMBRANO said he thought that Mr. Simma's contact with the media amounted to welcome publicity for the Committee's work. In that regard, it was right that the Committee should be providing information as well as receiving it. He thought it important for the Committee to have a well-established procedure for involving NGOs; the non-governmental organization had become a respected institution and should not be simply regarded as some form of subversive body. At the same time, the Committee must be circumspect in dealing with the submissions received, in order not to prejudice the standing of its own findings.

79. Mr. KOUZNETSOV said he shared the view that Mr. Simma's contact with the media had done the Committee a good service. He also felt that the tone of the letter in question was more positive than negative. The Committee must, of course, avoid dramatizing matters, and do everything to avoid misunderstandings, if respect for the Organization's human rights mechanisms was to be maintained and promoted. As he saw it, the Committee could take two specific steps. Firstly, it could look again at ways to improve its procedures, without prejudice to rule 69, paragraphs 1 and 2, of its rules of procedure. Secondly, the Committee should recognize that its members themselves, as independent experts, could rightly determine the nature of information received pursuant to rule 69, paragraph 3, of the rules of procedure and its relevance to implementation of the Covenant. Those points should perhaps be stressed at the Committee's next meeting with Canadian Government representatives.

80. A related matter of crucial importance concerned the point at which it could be taken that a Government had been informed of the Committee's concluding observations. In that regard, he shared the misgivings expressed about reliance on modern telecommunications and the comments on how to convey the requisite information, if done through the State party's permanent mission, at that point the Committee could take it that the Government had been duly informed; There should be no restriction on contact by individual members with the media, with the possible proviso that there should be no such contact until the relevant permanent mission had been informed of any Committee findings.

81. In any case, the Committee's reply to the Canadian Government should be in measured terms, clearly stating its interpretation of the matters referred to.

82. Mrs. JIMENEZ BUTRAGUEÑO agreed that press conferences were very useful, and supported the idea that the Committee should resume the practice of holding them.

83. Mr. GRISSA said that it was right to give wide publicity to the Committee's findings but that it would be wrong for any members to become a party to a State's internal political debate, with the obvious risks of exploitation for propaganda purposes and a resultant lack of confidence and collaboration on the part of Governments. Perhaps it would help if the Committee's deliberations on its concluding observations took place in public session.

84. Mr. SIMMA assured the Committee that at no point did he take sides in an election debate. It should be stressed that the Committee had not singled out the Canadian Government's record; the situation was that Canada was the first State party, among the industrialized countries, to have its report considered under the Committee's revised and firmer procedures, whose effect would also have to be taken into account, of course, when considering the reports submitted by New Zealand and Germany.

85. Mr. WIMER ZAMBRANO said that, in general, it might help if there was a clear understanding that pronouncements by the Chairperson were made on behalf of the Committee as a whole, but that its members spoke as individuals.

86. The CHAIRPERSON said it was noticeable that the findings of United Nations human rights bodies were always welcomed by opposition groups but never by Governments. He felt that, in general, it was a good thing to have wider exposure of the Committee's findings and explanations of its work. He took it that the Committee could agree on three conclusions. Firstly, a reply must be sent to the Canadian Government, and he undertook to draft a letter accordingly. Secondly, there was a consensus about the appropriate role of individual members vis-à-vis the press. Thirdly, some minor elements of the Committee's procedures needed to be clarified, and he would put some suggestions to the Committee on that matter in due course.

The meeting rose at 1.10 p.m.