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HUMAN RIGHTS COMMITTEE

Fifty-second session

SUMMARY RECORD OF THE 1366th MEETING

Held at the Palais des Nations, Geneva,  
on Friday, 21 October 1994 at 10 a.m.

Chairman: Mr. ANDO

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Morocco (continued) (CCPR/C/76/Add.3 and Add.4;  
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1. The CHAIRMAN invited the delegation of Morocco to reply to additional questions raised by Committee members on section III of the list of issues to be taken up in connection with the consideration of the third periodic report of Morocco.
2. Mr. MAJDI (Morocco), replying to a question from Mrs. Chanet, said that according to the Minister for Human Rights, the Oufkir family had not yet received its passport, but that the case would be taken up very soon; no subject was “taboo”, and all matters raised were dealt with and resolved.
3. Ms. BELMIR (Morocco), replying to Mr. Pocar’s question concerning the Administration’s discretionary power, said that all administrative acts could be appealed before the competent courts. As a result, any persons who considered that they had been injured by administrative decisions affecting the freedoms mentioned by Mr. Pocar could refer the matter to the competent administrative tribunal.
4. To supplement the information provided on the news, information and communication services and the Dahirs of 1958 and 1973 in paragraphs 81 and 82 of the report (CCPR/C/76/Add.3), which stated that after the national symposium in March 1993 a number of recommendations had been adopted on such matters as the need to adapt national legislation to the relevant provisions of international covenants, conventions and standards (para. 82 (b)), she said that the preparation of the relevant texts was under way or planned.
5. Ms. Evatt had asked questions concerning marriage between people of different religions. A distinction must be drawn between the situation of men and women. Moroccan Muslim men could marry non-Muslim Moroccan or foreign women, but such women could not inherit from their husbands unless they became Muslims. Moroccan Muslim women could marry only Muslim men - a restriction contained in the Personal Status Code that applied to Moroccan Muslims (mudawanah).
6. With regard to election results, mention had been made of an alleged problem of invalid ballot papers. There could be several reasons for invalid ballot papers, including nothing more than the ignorance of voters, who might cast several papers or might actually intend not to vote. Concerns had been expressed about the electoral system in Morocco and the risk of people voting twice. Every electoral system had its advantages and disadvantages and was chosen on the basis of a number of considerations, which could also be said of the monocameral system that Morocco had opted for.
7. In reply to Mrs. Higgins’ questions, she pointed out that the right to peaceful demonstration or assembly was contemplated in article 9 of the Constitution, which was governed by the Dahir of 15 November 1958 supplemented by the Dahir of 10 April 1973.

Exercise of that right required the permission of the local administrative authorities. The State, which was responsible for ensuring respect for rights and maintaining security and public order, could, by virtue of its discretionary power, deny the exercise of that right, but such action could be appealed before the competent courts.

8. On the subject of the right to freedom of association, it should be noted that by virtue of the Dahir of 15 November 1958 as amended by the Dahir of 10 April 1973, associations of persons could be formed freely, without authorization, provided that a declaration was made beforehand to the administrative authorities and the crown procurator of the court of first instance (report, para. 85). The association must not be for lucrative or unlawful purposes, be contrary to morality or undermine territorial integrity or the monarchic form of the State. The person declaring the association must attach signed certified copies of the association's statutes and a list of its leaders.

9. On the subject of the independence of the judiciary, she confirmed that the Higher Council of the Magistrature, which was in part elected, basically had the role of applying the guarantees granted to magistrates relating to their career and the performance of their duties. Under article 1 of the Dahir of 11 November 1973, the Kingdom's judiciary consisted of a single body comprising judges and public prosecutors of the courts and tribunals as well as judicial officers employed in the administrative services of the Ministry of Justice. Magistrates were appointed by Dahir, on a proposal by the Higher Council of the Magistrature, from among judicial assistants of Moroccan nationality recruited by means of a competition open to persons holding the relevant diplomas. In urgent cases where action had to be taken before the Higher Council of the Magistrature could meet, to fill a vacancy in a court and ensure the proper administration of justice, for example, the Minister of Justice provisionally appointed a judge to occupy the post pending approval of the appointment by the Higher Council of the Magistrature. Such provisional measures remained in force for three months.

10. Addressing a question concerning article 47 of the Moroccan Constitution, she said that that article must be read in conjunction with articles 45 and 46. Article 45 established the competence of the legislature, and article 46 established the regulatory domain, whereas article 47 provided that legislative texts could be amended by decree with the consent of the Constitutional Council when they concerned matters falling within the regulatory domain. The purpose of article 47 was to ensure respect for the distribution of powers between Parliament and the Government.

11. Lastly, in reply to a question concerning article 4 of the Covenant and emergency powers, she said that the provisions allowing the Government to exercise emergency powers under the circumstances specified in the Covenant were to be found in article 35 of the Constitution, which was modelled on provisions in certain Western constitutions. The article had been applied only once between 1965 and 1970, and, contrary to what had been said, non-derogable fundamental rights were upheld in times of emergency, as they were when institutions functioned normally; moreover, they occupied a special place in the Constitution and in Moroccan legislation.

12. Mr. LIDIDI (Morocco), replying to a question about the obtaining of passports, said that the right to a passport was an inherent right, and that in the event of abuse or impediment the person concerned could have recourse to justice; the delegation in fact had copies of a decision

handed down by the administrative chamber in May 1985 (Record No. 1 185), which stipulated that freedom of movement was a right guaranteed in article 9 of the Constitution and that the refusal to issue or to renew a passport must be justified by the competent authority. As could be seen, judicial remedies did exist.

13. There had been some discussion of restrictions on the freedom of expression. According to article 3 of the Moroccan Constitution, political parties, unions, district councils and trade chambers participated in the organization and representation of citizens, which mean that all sectors of society were required to participate effectively in political life. Such participation could not occur without the expression of opinions, including criticism, and that was why under Moroccan law all citizens were guaranteed the right to discuss and to criticize political choices. What the law did prohibit was acts falling within the category of defamation or insult. Defamation was defined as an act that violated the dignity or privacy of the individual, and insult as an expression offending the individual's dignity; those were definitions that could be found in many other constitutions. The courts had the right to bring legal action for acts of defamation, whereas criticism and the expression of political opinions in the context of laws and political practices were permitted, and the courts could not punish them.

14. Mr. ABOUTAHIR (Morocco), replying to a question from Mrs. Chanet concerning Mr. Noubir Amaoui, who had been the subject of a decision by the Working Group on Arbitrary Detention on 30 March 1993, said that three months later, in July 1993, Mr. Amaoui had been pardoned and immediately released. The case had been dealt with at the same time by the competent bodies of the International Labour Organization, which had requested information from the Moroccan Government; the Government had provided details of the charges brought against Mr. Amaoui and the guarantees relating to his trial. The Moroccan delegation was prepared to provide written explanations to any experts who were interested and wished to make it clear that Mr. Amaoui had resumed his trade union and political activities, and, as Secretary-General of the Democratic Labour Federation, participated in all national debates and in any international conferences and meetings he wished.

15. The CHAIRMAN observed that the Moroccan delegation had finished replying to the questions raised by members of the Committee and invited members of the Committee to make their final comments on their exchange with the delegation.

16. Mr. EL-SHAFEI thanked the members of the Moroccan delegation, and in particular Mr. Majdi, for the efforts they had made to reply to the many questions raised by Committee members, which had resulted in a rich and constructive dialogue. The positive developments in Morocco that could be seen from the information provided in the report and by the delegation, including amendments to the Constitution and certain laws, opened up a new and promising era in relations between the Government and the opposition. In addition to those positive aspects, mention must be made of Morocco's ratification of many international human rights instruments. All those measures were proof that the Moroccan Government was striving to bring its legislation into line with its international obligations under those international agreements.

17. Nonetheless, it was clear from the dialogue that there was much work to be done before Moroccan legislation was brought fully into line with the provisions of the Covenant. He highlighted in particular the practices of security officers in Morocco, which threatened to lead to a marginalization of the law. In some prisons the practice of torture had not been abolished, but

continued. The dialogue had also shown that problems persisted in the area of civil liberties, because the guarantees provided by human rights bodies were not firmly established. The principle of separation of the legislative and executive powers, meanwhile, existed only in theory, and specific measures for its implementation were required. His questions concerning the limited powers granted to Parliament for monitoring the Government had not been answered.

18. One could say that the observed willingness to improve the situation in Morocco needed fresh impetus. That could be achieved through constructive dialogue between the Government and the non-governmental machinery. Furthermore, notwithstanding the amendments made to various laws to bring them into line with the Covenant, he believed that further amendments were necessary, particularly to the Code of Criminal Procedure, the Criminal Code, regulations governing the judiciary, the terms of pre-trial detention and the Labour Code. Lastly, there were the cases of disappeared persons that had not been investigated and continued to cause concern. The authorities should not shirk their responsibility in that regard. He hoped that the Committee's recommendations would be transmitted by the delegation to the competent authorities and that they would be given due attention so that further progress could be made in the area of fundamental freedoms in Morocco.

19. Ms. EVATT said that the dialogue that had taken place between the Moroccan delegation and the Committee had been very good and constructive, and she was satisfied with the information provided on new legislative provisions and institutions in the country as well as the new attitude of frankness and cooperation that had been displayed vis-à-vis the Committee. Not all the questions raised had been answered, but they were reflected in the summary records of the discussions and should therefore be taken up in Morocco's next periodic report. She hoped that the next report would contain more detailed information on how certain articles of the Covenant were implemented, and that the laws adopted to give effect to the Covenant would be compatible with the exceptions allowed.

20. Some matters continued to be a source of concern, chiefly the power structure and the way in which Parliament was elected. Only two thirds of the members of Parliament were elected by popular vote, the other third being elected by representative groups. That was clearly not in line with the provisions of article 25, subparagraph (b), of the Covenant, namely "universal and equal suffrage", particularly as some people voted twice.

21. Of course, those situations must be viewed in the context of a fledgling democracy in which the King retained considerable power and influence. It was to be hoped that the recent trend to delegate powers to elected representatives would continue and that, in the exercise of power, the rule would be upheld whereby the Government was responsible before the elected representatives, in accordance with the procedures laid down in the Covenant, and that the judiciary would be fully independent, a concept to which the Moroccan authorities seemed to attach importance, at least in principle.

22. Furthermore, to achieve real democracy the country should open itself to criticism and investigation: in other words there should be greater freedom of the press, less control over publications, radio and television, and greater access to foreign media. She was glad to know that such matters could now be discussed in Morocco, and she hoped that when considering

Morocco's next periodic report the Committee would have further details on the laws governing the press, radio and television and access to information, and on the compatibility of those laws with the provisions of article 19, paragraph 3, of the Covenant.

23. With regard to the equality of women, she noted that Morocco had ratified the Covenant without any reservations, which meant that it must endeavour to give full effect to articles 3, 23 and 26 of the instrument as quickly as possible. During the dialogue, mention had been made of the fact that in many areas of the Personal Status Code, the Criminal Code, the Nationality Code and labour legislation distinctions were drawn between men and women both in law and in practice. All those areas must be reviewed to see whether the breaches of equality constituted distinctions that were justifiable or not under the Covenant. In the case of Morocco, many distinctions had been brought to her attention for which she saw no real justification, especially in the area of personal status, but also in areas that were the subject of reservations entered by Morocco with respect to the Convention on the Elimination of All Forms of Discrimination against Women.

24. Like other Committee members, she wished to stress the need to investigate violations of the rights set out in articles 6, 7 and 9 of the Covenant and to compensate the victims and prosecute the perpetrators. It was important to shed light on the violations committed and to ensure that reparation was made. The best guarantee for the future was obviously active prevention through education, training, the strict application of regulations governing detention and strict compliance with article 9 of the Covenant.

25. It could not be denied that much remained to be done to ensure that human rights were adequately protected in Morocco; the points raised by the Committee should be considered and lead to action. In conclusion, she welcomed the spirit of openness that had emerged during the dialogue, the measures taken to publicize and disseminate the Covenant and the willingness shown by the authorities to establish relations with non-governmental organizations (NGOs). She strongly encouraged the State party to continue along those lines.

26. Mrs. HIGGINS said that although there was no mention in the report of difficulties encountered in implementing the Covenant, the delegation had not concealed those difficulties in its presentation of the report. Moreover, it had given very precise answers to questions, except for those it had not anticipated. However, she did not think that that should be construed as an attempt by the delegation to sidestep tricky questions, because its members had given very full answers to the questions for which they had been prepared, even those that concerned sensitive areas. If some points remained unclear, it was more likely because the delegation had not been empowered by the national authorities to provide the necessary clarifications. Certain questions had thus remained unanswered. As for her own concerns, she did not know whether the Committee's concluding observations regarding its consideration of the report would be published in Morocco. Nor did she know whether the Moroccan authorities intended to go beyond providing reparation in the case of missing persons by prosecuting the persons responsible. With regard to the prisoner amnesty, she wondered why some had been released while others, who had been imprisoned for similar reasons, had not. There were still a number of queries concerning in particular the Government's attitude to the Baha'i community, bearing in mind article 19 of the Covenant and the enjoyment of the rights of freedom of assembly and of association.

27. That being said, she had the feeling that the human rights situation in Morocco had improved since the consideration of the second periodic report (CCPR/C/42/Add.10), an improvement that had been reflected throughout the consideration of the current report. She welcomed, *inter alia*, the scale of the amnesty and the fact that there were plans for other prisoners to benefit from the measure. Nevertheless, the criteria used were still not clear to her. Other positive aspects worth mentioning included the fact that human rights bodies faced fewer difficulties, “missing persons” who had regained their freedom could say more about what had happened to them and the status of women had improved, particularly with the lifting of certain restrictions laid down in the Commercial Code.

28. Much remained to be done, however. She would confine her comments to a few areas, first of all the question of Western Sahara. The events did not date from yesterday, and in fact the situation was the result of Morocco’s occupation of the territory. In the debate as to who would participate in the referendum on the future of Western Sahara, it was important to bear in mind that Moroccans had settled in the territory after an advisory opinion had been issued by the International Court of Justice, which had declared that Western Sahara had never been part of Morocco’s sovereign territory. While she was aware of the problems posed by the situation, she hoped that the population of Western Sahara would be able to exercise its right to self-determination in the very near future. In the meantime, the progressive measures adopted in Morocco, in particular with regard to torture and the length of police custody, should be applied in the territory of Western Sahara as well.

29. She was equally concerned by the independence of the judiciary and the separation of powers in Morocco, in particular between the executive and the legislative branches. All States were free to choose the type of government they wished, but the choice of a specific regime should not in itself entail the denial of certain rights.

30. There were also other areas in which steps must be taken to guarantee the full observance of the rights enshrined in the Covenant, especially those relating to the freedom of expression and gender equality. She hoped that the Government would continue in the positive direction in which it had embarked. For example, in the matter of obtaining passports the law still discriminated against women. The delegation had explained that in the event of a husband’s refusal, the wife could appeal to the courts. However, that was far from enough. Such a provision was no substitute for quite simply ensuring equal rights between men and women.

31. She concluded by thanking the delegation of Morocco for its cooperation with the Committee and requested it to convey the Committee’s comments relating to the consideration of the report to the competent national authorities.

32. Mr. POCAR said he welcomed the dialogue that had taken place with the Moroccan delegation, which was undeniably better than the one that had taken place when the second periodic report (CCPR/C/42/Add.10) had been considered. The spirit of openness shown by the delegation reflected the obvious progress made in the field of human rights in Morocco in recent years. Nevertheless, a number of questions by Committee members had been left unanswered or had received only partial replies. That fact was surely due to the delegation’s lack of information on some specific points rather than to a desire to conceal real difficulties, and he thanked the delegation for not having tried to avoid embarrassing questions.

33. With regard to improvements still required in the field of human rights, it should be noted that, despite progress in matters of gender equality, much remained to be done to eliminate discrimination against women. Legal instruments but especially practice entrenched women's inferiority in Moroccan society in many areas. Thus the real impact of the reservations entered by Morocco upon acceding to the Convention on the Elimination of All Forms of Discrimination against Women remained to be seen.

34. There were still some concerns about the enjoyment of fundamental freedoms such as the freedom of expression, assembly and association. He duly noted that it was possible to appeal against administrative decisions. Nevertheless, Moroccan legislation left government authorities, and public authorities in general, too much discretionary power. Thus the control exercised by administrative tribunals - necessarily limited, without the possibility of review on the merits - was not sufficient. Such a situation could give rise to abuse, unless the administrative tribunals established principles on the basis of their case law that the authorities would be compelled to respect. It was thus likely that the abuses were due to lacunae in legislation. He noted in that connection that the Committee had not received the clarifications requested concerning abuses committed in the past.

35. He concluded by recalling that the national symposium held in 1993 had recognized the need to bring legislation into line with the Covenant and, more generally, with the international instruments to which Morocco was party. The Committee hoped that the next periodic report would describe positive developments both in legislation and practice with regard to fundamental freedoms. He would be grateful if the delegation would convey the concerns expressed by Committee members to the competent national authorities.

36. Mr. BRUNI CELLI said that he had not been a member of the Committee when the second periodic report had been considered, but he, too, had the feeling that Morocco had made great progress since then. The amnesty of the previous July, the fact that some missing persons had been found, the reform of the prison system and Morocco's accession to several international human rights instruments were some examples. There could be no doubt that the international community had played a role in that positive development. The Committee, which in a way performed a kind of supervisory role, had also played its part in the changes that had taken place.

37. Nevertheless there were still many issues of concern. There were cultural, legal and political principles underlying Moroccan society that were the cause of gender discrimination, and probably of religious and political discrimination, too. As Mrs. Higgins had said, all States had the right to choose the political system that best suited them. However, it was necessary to ensure that, in the case of a monarchy, the King did not have excessive power, which would limit the sphere of competence of the judiciary and the legislature. There could be no doubt that a monarch's excessive power obstructed democratic development.

38. He was also concerned about a number of other matters. Questions relating to the death penalty and the extrajudicial executions that had taken place - and surely continued to take place - remained a particular source of concern. Furthermore, the Committee did not know what measures had been taken to punish the perpetrators of acts of torture committed against prisoners. Had impartial investigations been conducted or would they be opened? Other Committee members had also referred to aspects of the human rights situation that still required clarification, in particular the issue of compensation for victims of human rights violations



committed by State employees and the question of freedom of information and freedom of assembly. Although a certain number of points were still unclear, he nevertheless believed that that was largely due to Morocco's internal situation. He hoped that the next periodic report would portray a more satisfactory picture of the human rights situation in Morocco.

39. Mrs. CHANET also welcomed the fact that the dialogue with the representatives of the Moroccan authorities had been more satisfactory than in the past. That was both a reflection on the improvement in the human rights situation in Morocco and the result of the delegation's frank attitude. She cited the example of the Tazmamert prison, whose very existence had previously been denied by the Moroccan authorities. A great step forward had been taken in the preceding days when the delegation had admitted that 34 people have died in that prison, and that death certificates would soon be issued to the families concerned. Several other positive aspects were worth noting: the release of prisoners, amnesty measures, the authorities' willingness to embrace political openness, the establishment of a human rights ministry, Morocco's accession to a large number of international human rights instruments and the improved status of NGOs in the country.

40. Nevertheless a number of concerns remained, and she would mention only the most serious ones. First of all, the inequalities between men and women constituted real discrimination against women. It was nevertheless to be hoped that the authorities would take advantage of Morocco's accession to the Convention on the Elimination of All Forms of Discrimination against Women to put an end to those inequalities. With regard to the right to life, she noted that crimes considered as heinous were subject to the death penalty, yet that type of crime did not correspond to the definition of the most serious crimes contained in the provisions of the Covenant.

41. As for the question of missing persons, she had been horrified to learn that such a category of persons existed. The numbers of missing persons cited by members of the Committee had been challenged by the Moroccan delegation, which had referred to natural causes of death. However, while cases of death from natural causes surely existed, given the very large number of persons concerned and the poor living conditions in general, they could not account for so many disappearances. What was more, people had sometimes "reappeared", like the 280 prisoners who had been released in June 1991. It was clear that such disappearances were connected with the question of Western Sahara, and she believed that the authorities should not delay any further on the legal and political fronts, since in doing so they encouraged the impunity of those responsible for them. If one looked at the case of those persons whose disappearance the Government officially recognized, one had to ask why that had happened. Who had caused their disappearance? Had the persons recognized as being guilty of causing their disappearance been prosecuted? All those questions remained unanswered.

42. She hoped that the reform of the Criminal Code would result in the reform of the Code of Criminal Procedure and thus reduce the excessive length of police custody and pre-trial detention. She also hoped that the fact that the prison budget had been doubled would make for an improvement in the prison situation, which was critical. Lastly, with regard to article 19 of the Covenant, she hoped that the next periodic report would give a detailed account of amendments made to legislation relating to freedom of the press.

43. Mr. WENNERGREN said that he associated himself with the remarks of other members of the Committee who had noted the positive and negative aspects of the human rights situation in Morocco, and he also welcomed the developments that had taken place since the consideration of Morocco's second periodic report. Furthermore, the dialogue with the Moroccan delegation had been constructive in many respects.

44. He would confine himself to a remark concerning royal prerogatives. The Constitution provided that the King enjoyed a certain number of prerogatives. He wished to emphasize that those privileges, and their enjoyment, must be in accordance with the Covenant. The King was also bound by the provisions of that instrument, and he would be grateful if the Moroccan delegation would kindly convey that remark to the national authorities.

45. Mr. AGUILAR URBINA commended the sincerity with which the Moroccan delegation had approached its dialogue with the Committee, which had made it one of the most constructive. The consideration of Morocco's third periodic report had highlighted notable improvements in the human rights situation in the country. Nevertheless, certain grey areas remained, and he drew attention first of all to the question of missing persons. The Committee had heard that 53 persons falling under the category of "voluntary or alleged disappearances" had been detained by the army in Agadir. Such disappearances could not be considered "alleged", since the authorities knew where the persons concerned were, and under no circumstances could detention by the army be described as "voluntary". As for the persons who had disappeared or died, the delegation had said that it was time to turn the page; that was true, but by no means must the book be closed and the past forgotten. History must be written.

46. The situation of women in Morocco still left much to be desired, where the issuing of passports and marriage were concerned, for example. As indicated in the report, the King himself had denounced those discriminatory practices, which ran counter to the teachings of Islam. It was time for things to change, and he had no doubt that the Moroccan delegation would convey that observation to the Government.

47. The CHAIRMAN thanked the Moroccan delegation for its cooperation. First of all, he wished to take note of the greater transparency that had characterized the periodic report and the debate thereon as well as the trend towards democracy that was emerging in Morocco. While there had been many improvements, areas of concern persisted, and he endorsed the concerns expressed by members of the Committee. He added that monarchy was far from being incompatible with democracy, as was borne out by the example of various European countries that in different respects stood as models of respect for human rights. Given that the 1992 Constitution proclaimed in article 1 that Morocco was "a constitutional, democratic and social monarchy" and stipulated in article 2 that "sovereignty belongs to the nation, which exercises it directly ...", there was nothing to prevent the monarchy from coexisting with respect for a democratic system. For the time being, the increased transparency already observed augured well for the continuation of the dialogue between the Moroccan Government and the Committee.

48. Mr. MAJDI (Morocco) said he hoped that the dialogue had been as enriching for the members of the Committee as it had been for his delegation. He was grateful for the efforts made by the members to keep abreast of the situation in Morocco.

49. The dialogue had afforded an opportunity to describe the progress made, but also the difficulties encountered. Everyone knew that respect for human rights was a question of willingness, and the Committee could rest assured that such willingness existed in Morocco. It was also a question of resources, which unfortunately were sometimes lacking, thereby delaying progress in strengthening the rule of law.

50. The questions that his delegation had been unable to answer during consideration of the report would be brought to the attention of the Moroccan authorities and answered in the next periodic report.

51. The CHAIRMAN said that the Committee had completed its consideration of the third periodic report of Morocco and that the fourth periodic report would be due on 31 October 1996.

52. Mr. Majdi, Mr. Lididi, Mrs. Belmir and Mr. Aboutahir (Morocco) withdrew.

The meeting was suspended at 11.50 a.m. and resumed at 12.10 p.m.

#### ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

General comment on issues relating to reservations made upon ratification or accession to the Covenant or the optional protocols thereto, or in relation to declarations under article 41 of the Covenant (continued) (CCPR/C/52/CRP.1)

53. Mr. AGUILAR URBINA (Chairman/Rapporteur of the Working Group on Article 40) said that the Working Group had based itself on the excellent draft revised by Mrs. Higgins (document without symbol issued to the Committee in English only), most of which it had agreed to. Mrs. Higgins had accepted the amendments put forward by various members, and the Committee thus had before it the general comment issued in document CCPR/C/52/CRP.1, which the Working Group proposed for adoption. The only real amendments made to the draft revised by Mrs. Higgins involved some rewording and modifications of the form and were intended to bring the terminology used into line with that of other general comments.

54. Mrs. HIGGINS suggested that before studying the draft submitted for consideration in detail, the Committee might wish to turn its attention to two particularly important and sensitive questions of principle. First of all, the Committee considered itself competent to determine whether a reservation met the condition of compatibility with the object and purpose of the Covenant; however, it remained to be seen what the Committee was empowered to do when it considered that a given reservation did not fulfil that condition. She had not resolved the issue in her draft, but she believed that the Committee should by no means avoid it.

55. The second sensitive question was her legal analysis concerning the incompatibility with the object and purpose of the Covenant of certain reservations entered with respect to the Optional Protocol. No member of the Working Group had challenged her reasoning, but the Committee must nevertheless reflect on the matter, given that some countries, including Germany, had entered reservations to the Optional Protocol.

56. Mrs. CHANET commended the excellent quality of the draft. However, she had difficulty in finding parts where changes had been introduced in the text, especially the parts where there had been deletions of previously existing text. In particular, she did not know

whether the very important issue of the permissibility of reservations was addressed in the new text. That issue must not be avoided, and the Committee should easily be able to find a way of dealing with it in its general comment. In an article that she was prepared to distribute to Committee members a French professor of public international law had suggested that the Committee was overly cautious, whereas as a treaty monitoring body it was fully equipped to assess reservations entered by States parties. The Committee might wish to say that by virtue of the powers vested in it under article 40 and by virtue of the Optional Protocol it was perfectly competent to comment on and interpret reservations. It was true that States parties would find fault with the general comment, which was why it was imperative to anticipate such criticism, and the Committee had enough information to do so. It must, however, avoid giving the impression that it was acting on the basis of its own opinion, when its competence derived from public international law. It should also avoid taking a stance that was too rigid and establishing criteria that were too strict, as some States might only accede to the Covenant because they had the possibility of entering reservations. She therefore suggested that the Committee should deal with that matter, before considering the draft text in detail.

57. Mr. AGUILAR URBINA (Chairman/Rapporteur of the Working Group on Article 40) recalled that while the Working Group had made amendments of form to the revised draft submitted by Mrs. Higgins, the substance of the draft general comment remained the same.

58. Mrs. HIGGINS said that she still preferred the revised draft she had submitted, which, she wished to point out, had been drafted on the basis of all the comments Committee members had transmitted to her during the intersessional period. She felt in particular that the draft proposed by the Working Group made excessive reference to the Vienna Convention on the Law of Treaties as compared with the Covenant, which ought to be the Committee's main concern.

59. Ms. EVATT said that the Committee should clearly set out, in the introduction to its general comment, the reasons why it had felt it necessary to clarify its interpretation of the reservations entered by States parties with respect to the Covenant or the Optional Protocols. The basic issue was the consequences that reservations made in that way might have on the extent to which States parties honoured their obligations under the Covenant, which was precisely what the Committee was called upon to verify under its terms of reference.

60. Mr. WENNERGREN said that it was not the Committee's responsibility to judge whether reservations entered by States parties were justified, necessary or superfluous; it merely had to say whether it considered those reservations to be compatible with the provisions of the Vienna Convention on the Law of Treaties, and that if they were, it must accept them.

61. Mr. POCAR said that he approved of the substance of the draft revised by Mrs. Higgins, although he thought that it could be shortened and simplified. Like Ms. Evatt, he thought it would be useful for the Committee to clarify at the beginning of the general comment its interpretation of the reservations made by States parties. He doubted that the Committee could assert that the trend towards entering reservations relating to the Covenant was on the increase, as the figures available by no means confirmed such a trend. Lastly, he thought it was necessary to retain the reference to the Vienna Convention on the Law of Treaties, whose article 19, paragraph 3, did indeed provide useful guidance, as indicated in paragraph 4 of the Working Group's text.

62. Mr. BÁN agreed with Mr. Aguilar Urbina that there was no contradiction between Mrs. Higgins's revised draft and the recommendation of the Working Group, which had prepared its text on the basis of ideas from Committee members. As to Ms. Evatt's contention that the Committee should clearly explain the purpose of the general comment, he noted that, according to the second sentence of paragraph 1 of the Working Group's text, "in the performance of its duties under either article 40 of the Covenant or under the Optional Protocol, the Committee may need to know whether a State is bound by a particular obligation", which was precisely the purpose of the general comment. It would thus be useful for the Committee to make reference elsewhere in the general comment to reservations entered not only with regard to the Optional Protocols but also in relation to article 40 of the Covenant. He agreed with Mr. Pocar that all references to a growing trend towards the formulation of reservations to the Covenant should be omitted; at any rate, if such a trend was confirmed, it would have to be illustrated by accurate figures.

The meeting rose at 1 p.m.