



International Covenant on Civil and Political Rights

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Human Rights Committee 3620th session

Summary record (partial)** of the 3620th meeting (closed)***

Held at the Palais Wilson, Geneva, on Tuesday, 9 July 2019, at 10 a.m.

Chair: Mr. Fathalla

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- * All persons handling this document are requested to respect and observe its confidential nature.
 - ** No summary record was prepared for the rest of the meeting.
 - *** No summary records were issued for the 3618th and 3619th meetings.

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

Organizational and other matters

Methods of work

1. **The Chair** said that, at the meeting of the Chairs of the human rights treaty bodies held in New York on 24–28 June 2019, the Chairs had discussed a range of issues for inclusion in a joint position paper on the future of the treaty body system. With regard to the reduction of unnecessary overlap, the Chairs had agreed to limit the number of questions included in lists of issues prior to reporting to between 25 and 30. They had also agreed that the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (the Covenant-based committees) would review countries on the basis of an eight-year cycle and synchronize the timing of their reviews. With regard to the review capacity of the treaty bodies, the Chairs had agreed that the Covenant-based committees would review up to 25 State party reports per year, and the remainder of the treaty bodies (the Convention-based committees) up to 50.
2. The views expressed by more than 40 States in a non-paper on the 2020 review of the treaty body system, submitted by the Permanent Mission of Costa Rica on 20 June 2019 and discussed at the meeting, had largely coincided with those of the Chairs and the Human Rights Committee. While that was a positive sign, most of those States were from one of only two regional groups – Europe and Latin America. An effort was being made to ascertain the views of States from other regional groups on the non-paper.
3. States parties – including the United States of America – had been ostensibly optimistic about the financial situation, although their official position in that regard remained unclear. The Secretary-General, while noting the vital importance of the treaty bodies’ work, had informed the Chairs that the financial crisis facing the United Nations was unprecedented, that 2020 could prove more difficult still than the final quarter of 2019, and that priority would be given to replenishing reserves.
4. **Mr. Ben Achour** said that he wondered whether the maximum number of questions to be included in lists of issues could be reduced to 20, given the regular recurrence of certain questions under different headings. He also wished to know why the agreed review cycles of the Covenant-based bodies and the Convention-based bodies differed. Lastly, the uncertainty caused by the financial crisis was affecting individual Committee members. He had cancelled his hotel reservation for October on the assumption that the Committee’s forthcoming session would not go ahead and had struggled to secure suitable accommodation after learning that it would. He would like to know the schedule for the coming months so that he could make the necessary arrangements.
5. **Ms. Andrijasevic-Boko** (Office of the United Nations High Commissioner for Human Rights) said that the secretariat hoped to be able to confirm the dates of the first session of 2020 later in the month. However, since conversations regarding budget cuts were ongoing, it could not confirm the schedule for 2020 as a whole.
6. **The Chair** said that the Committee had previously agreed that lists of issues should contain 25 questions; however, that number was not set in stone. The Convention-based committees had preferred to retain four-year reporting cycles. Whether that would be financially viable remained to be seen.
7. **Mr. Shany** said that the Covenant-based committees had a broader remit than the Convention-based committees and could therefore take a different approach. Maintaining a four-year review cycle was unrealistic as it would require significantly more resources, so the Covenant-based bodies had preferred to make realistic proposals based on available resources. He was disappointed that the Convention-based committees had appeared to backslide somewhat since a recent meeting of focal points on the 2020 review of the treaty body system in Copenhagen, at which a six-year review cycle had been advocated. States were unlikely to be amenable to the idea of a higher reporting burden. Opinions also differed on the consolidation of reports. The Convention-based committees were opposed to the idea, whereas the Covenant-based committees saw it as an opportunity to coordinate

efforts and divide labour. Lastly, the proposals made in respect of on-site reviews were interesting but unrealistic for the moment, as they called for considerable resources.

8. **The Chair** said that despite calls from some quarters for on-site reviews, he had proposed that task forces – rather than entire committees – should visit States parties to discuss country reports and then compare their findings with their colleagues. Differences in opinion were inevitable but compromise was key. In adopting a common position, the treaty bodies were conveying the right message to the States parties.

9. **Ms. Kountouri Tapiero** (Office of the United Nations High Commissioner for Human Rights) said that the common position paper was not intended to be endorsed; rather, the committees should pilot-test the different ideas put forward in the paper to determine whether or not they were feasible. Some ideas could be put into practice immediately since they concerned working methods and did not require the approval of the General Assembly. The Human Rights Committee had proposed, and might wish to pilot-test, the rollout of a simplified reporting procedure for States parties. In so doing, it could help to determine how standard lists of issues prior to reporting might be drafted for initial country reports. A common platform was required to enable committees to collaborate to that end. As a member of the Committee on the Rights of the Child had put it at a recent workshop on the simplified reporting procedure, coordination among the committees was currently post facto. In other words, the committees consulted one another's concluding observations when drafting their questions, whereas work should ideally be coordinated ahead of reviews.

10. **Mr. Heyns** said that he was pleased that the position paper broached the subject of reviews in the region and gave committees the leeway to pilot-test different ideas without necessarily having to implement them. The Committee should determine its approach to simplified reporting, which was integral to making the system more user-friendly. He was keen not to further reduce the number of questions in lists of issues, since the Committee routinely asked certain questions relating to international law and would have little room for more nuanced questions.

11. **Mr. Zyberi** asked whether the Chair had gathered a sense of the States parties' position on the treaty body system at the meeting of the Chairs.

12. **The Chair** said that he had expressed the opinion, at the meeting of Chairs, that the review target of 50 State party reports per year for Convention-based treaty bodies was not practical and would require a tremendous amount of funds.

13. The States parties had virtually all expressed positive views, during their meeting with the Chairs, concerning the future of the treaty bodies and financial issues. The issue of the independence of treaty body experts had been raised by a number of States. He had pointed out that responsibility for submitting candidacies and voting on treaty body membership lay with States. When reports or communications relating to a specific State party were discussed, members who were nationals of the State party concerned were required to leave the room.

14. The Chairs had also met with Costa Rica and the 44 other States that had circulated the non-paper, since they could play a leading role in the General Assembly.

15. **Ms. Kran** requested that documents such as the position paper should be submitted to Committee members at least two working days in advance of the debate in order to enable them to prepare their comments.

16. As the increased periodicity proposed by Convention-based treaty bodies would require the allocation of more resources, it was unlikely to meet with a positive response from States parties in political terms. It was important, in view of the dire budgetary situation, to present a vision that was feasible and realistic.

17. The non-paper raised salient points for the treaty body reform process, including coordination within the United Nations system. It was encouraging to see that the 45 States supported the strengthening of the treaty bodies, including on-site reviews. She considered that such reviews were a less expensive option and brought human rights closer to the countries and communities concerned.

18. It was regrettable that the Secretary-General had focused on budgetary issues in response to the question concerning the prevention of human rights violations.
19. The High Commissioner for Human Rights could help to strengthen the treaty body system by presenting a vision paper to the 42nd session of the Human Rights Council in September 2019.
20. **Ms. Sancin** said that the position paper contained only a brief reference to individual communications, although the growing number of communications constituted a major burden, particularly for the Human Rights Committee and the secretariat. The non-paper, on the other hand, contained a lengthy paragraph on the importance of increasing support for the processing of individual communications.
21. **The Chair** said that the reference in the position paper was brief because only a few treaty bodies were affected. However, the issue had been raised during the meeting with States parties. The Chairs had responded by drawing attention to the huge backlog of communications. The position paper refrained from addressing financial issues and focused instead on matters of substance.
22. **Mr. Shany** said that the draft summary of the Committee's position on the 2020 review reflected points made in the Chairs' shared vision document and the non-paper circulated by 45 States. The Committee should perhaps decide whether to begin implementing the changes proposed in its position paper in 2020.
23. The section on general issues stated, inter alia, that the position paper was a budget-neutral proposal based on General Assembly resolution 68/268 with some minor adjustments and transitional costs.
24. It was important for States parties to respect the existing budgeting formula for individual communications in order to reduce the backlog. The Committee would otherwise continue to depend on extrabudgetary resources. The new procedures had led to a considerable increase in productivity. The Committee expected to consider over 150 communications in 2019, which was more than double the number considered in the past.
25. With regard to simplified reporting, the Committee would shift in 2020 to an opt-out system. States parties would be notified that all reports, including initial reports, would henceforth be reviewed on the basis of simplified reporting unless they wished to adhere to the previous system. The position paper also identified the ambitious target of 25 questions for each list of issues.
26. Increased coordination of lists of issues under the pilot programme with the Committee on Economic, Social and Cultural Rights had proved advantageous to date.
27. The predictable review cycle, which had been discussed at the Chairs' meeting, would be launched in 2020. An eight-year calendar would be published in late 2019. The 173 States parties would be divided into eight clusters, and each cluster would be allocated a year during the period ending in 2027. The list of issues would be sent to States parties two years prior to the review, and the follow-up to concluding observations would be scheduled for a date two years after the review. The entire process would be resumed three years later.
28. The Committee recommended that the budgetary formula should be adjusted to accommodate the new elements. The secretariat would require additional resources to prepare lists of issues, especially for non-reporting States. In the long run, however, the procedure would reduce costs, since there would be fewer pages and documents for translation. Other creative measures, such as on-site reviews, required further study.
29. The words "It is recommended that the Committee decide in principle" in the first recommendation would be replaced with "The Committee decides in principle".
30. A leap of faith would be required to hope to introduce the reforms in 2020. While it should be possible to review 21 State party reports by displaying a certain amount of flexibility in terms of meeting time, additional funding would be required to enable secretariat staff to prepare draft lists of issues and concluding observations. OHCHR supported the reforms in principle, but it was currently in a state of financial uncertainty. It

might therefore prove necessary to seek extrabudgetary resources for the transitional period or to request support from States on an ad hoc basis. Committee members might also assume additional responsibility for formulating documents. The introduction of a predictable review cycle in an environment of uncertainty could actually provide additional protection for the Committee. If the worse came to the worst, it could return to the previous system, but that would be an embarrassing turn of events, since the Committee was currently the only treaty body that was willing to introduce practical reforms in 2020 that would make it easier for the secretariat, States parties and civil society to plan ahead.

31. **The Chair** said that the Bureau considered that opt-out letters should be sent to States parties as soon as possible.

32. **Mr. Heyns** asked whether the Committee should adopt a formal decision on the introduction of simplified reporting for initial reports and on the opt-out system.

33. **The Chair** said that the Covenant entitled the Committee to request reports from States parties. It was, in his view, an internal matter that did not require the adoption of a decision.

34. **Mr. Shany** suggested that the Committee should amend its working methods to reflect the new procedures. The Bureau could prepare a decision on the predictable review cycle, simplified reporting for initial reports and the opt-out system for adoption by the plenary and circulation to States parties.

35. **Ms. Pazartzis** said that the draft position paper was a useful tool to shed light both on the Committee's position and the steps taken, and planned, in preparation of the 2020 Review. It might also be opportune to draw attention to the circumstance that the Committee was handling more communications than other treaty bodies and, as a result, needed to deal with a larger backlog.

36. **Mr. Zimmerman**, supported by **Mr. Heyns**, said that the proposed move towards an opt-out, rather than an opt-in model, would require a change to rule 73 (2) of the Committee's rules of procedure, which currently solely provided for States parties to opt into the simplified reporting procedure.

37. **Mr. Santos Pais** said that he, too, fully supported the draft position paper. The Committee's willingness to take the risks entailed by new methodologies placed it at the frontline of change.

38. **Ms. Pazartzis** said that she was not only unconvinced of the need to change rule 73 (2), but also thought it untimely to do so before a definitive decision on the way forward had been taken. She would, however, partake in the informal consultations on the matter.

39. **The Chair** said that interested members should prepare an amended version of the rule for the Committee's consideration at a subsequent meeting.

40. *It was so decided.*

General discussion in preparation for a general comment on article 21 (right of peaceful assembly) of the International Covenant on Civil and Political Rights

41. **Mr. Heyns** (Rapporteur for the draft general comment) said that the Committee must focus on drafting a persuasive, useful and high-quality document that struck a proper balance between idealism and realism. In order to do so, members must become experts in the issues at stake.

42. A first draft had been prepared on the basis of the earlier general discussion in preparation for a general comment on article 21 (right of peaceful assembly) of the International Covenant on Civil and Political Rights, held on 20 March 2019 (CCPR/C/SR.3593), and 43 submissions from stakeholders. Thus far, no submissions had been received from States parties.

43. The proposed process for preparing the general comment involved two readings of the document. The first reading would serve to discuss the draft sentence by sentence and would provide an opportunity for members to offer observations and suggestions. On the

basis of that exchange, a revised draft would be prepared and put to public consultation, with a request for comments from stakeholders and States parties. In the light of that external input, the Committee would then undertake its second reading of the document. Ideally, the first reading would be finalized by the end of the Committee's 127th session in October 2019. Public consultations would then take place during the first months of 2020 and the second reading should be concluded by the end of 2020 at the latest. Given that several members' terms ended at the end of 2020, it would be useful to respect that timeline.

44. In order for the Committee to gather expertise in the matter, it had been proposed to convene a weekend retreat for members and external experts on the margins of the Committee's 128th session in March 2020. Members were invited to express interest and put forward proposals for external experts that might usefully be invited. The permanent representation of Switzerland in Geneva had offered to fund the event.

45. He had been contacted by several non-governmental organizations working in the field who were organizing different regional events on freedom of assembly. Members might wish to explore the possibility of attending one or several of such events, which could be a useful platform to resource new ideas that could feed into the process and, at the same time, raise awareness of the Committee's work.

46. Work had also commenced on a website containing a compilation of the Committee's jurisprudence, relevant jurisprudence from regional mechanisms and other documents; the website would be available for perusal by members shortly.

47. **The Chair**, supported by **Mr. Shany**, said that it might be useful for the Bureau to discuss the way in which the Committee wished to deal with the letter received from the Government of France, in which it took issue with some elements of general comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life. The Bureau could then propose a course of action to the Committee at a forthcoming meeting.

48. *It was so decided.*

49. **Mr. Shany** said that previous practice had shown that it was most useful for the Committee to draw on its own expertise during the first reading and focus on reaching a common position. It would not be helpful to try to take on board external input at that stage. Once agreement had been reached among members, the document could be put to public consultation and the Committee could subsequently re-evaluate its position on the basis of the comments received from stakeholders and States parties.

50. The proposal to hold a retreat was excellent. As regarded suitable external expertise, the Committee might wish to recall its fruitful exchange with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE). It might also consider drawing on experts with experience of regional systems, and engage with the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

51. **The Chair**, recalling some States parties' misgivings about the preparation of general comments per se, said that it was important to point out that doing so was a vital component of the development of international law. Supported by **Mr. Heyns**, he said that it might be useful to brief States parties on the proposed procedure and timeline, so as to preclude any misunderstandings about their involvement in the process. To that end, the Committee might wish to address the matter during its meeting with States parties.

52. *It was so decided.*

53. **Mr. Ben Achour** said that the outcome document of the seminar on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 2 December 2013 in Geneva (Palais des Nations, Conference Room XVIII), might provide useful input into the work on the general comment.

54. The proposed timeline for the development of the general comment appeared entirely reasonable. It would, however, be helpful to obtain further clarification regarding the nature of the proposed participation of Committee members in events organized by non-governmental organizations.

55. **Mr. Heyns** said that the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, prepared at the request of the Human Rights Council and submitted on 4 February 2019, might also be a useful reference document.

56. Members would not be expected to attend events organized by non-governmental organizations in an official capacity as representatives of the Committee. Rather, it might be an opportunity for interested members to engage informally, raise awareness of the Committee's work and identify persons who could, in turn, be of benefit to that work on the general comment.

The discussion covered in the summary record ended at 11.50 a.m.