



International Covenant on Civil and Political Rights

Distr.: General
22 July 2015

Original: English

Human Rights Committee 114th session

Summary record of the 3183rd meeting

Held at the Palais Wilson, Geneva, on Monday, 13 July 2015, at 10 a.m.

Chairperson: Mr. Salvioli

Contents

Follow-up on concluding observations on State party reports


This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings held during this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-11891 (E) 200715 220715



Please recycle 



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

Follow-up on concluding observations on State party reports

Draft report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/114/R.1)

1. *The Chairperson invited the Special Rapporteur for follow-up on concluding observations to present her report.*
2. **Ms. Cleveland** (Special Rapporteur for follow-up on concluding observations), expressing appreciation of the assistance she had received in her relatively new role as Special Rapporteur, said that she would welcome the Committee's views on whether the draft report contained in document CCPR/C/114/R.1 demonstrated a consistent application of the follow-up procedure used by the Committee, particularly the system for evaluating State party responses on a scale A to E. As a general principle, where a State party had responded to a request for further information by restating information previously supplied she had given a C2 evaluation.
3. Norway had been examined in 2011 and had first responded to the Committee's concluding observations in 2012; two further replies had been sent following requests for additional information. As the State party had yet to provide enough detail on either the exact nature of its new national human rights institution or the specific measures taken to end the unjustified use of coercive force and restraint of psychiatric patients, she suggested an evaluation of B2 in both cases. With regard to the use of electroconvulsive therapy (ECT), on which no progress had been made, she proposed a C1 evaluation. The Committee should send a letter informing the State party of the discontinuation of the follow-up procedure and asking for additional information be included in its next periodic report.
4. **Ms. Seibert-Fohr** asked whether it was the usual practice to request further information when dialogue with a State party was being discontinued. She also drew attention to the issue of the word limit applicable to reports on follow-up, which needed to be resolved.
5. **The Chairperson** echoed the previous speaker's comments concerning the word limit on follow-up reports and said that any additional information requested of a State party when dialogue was being discontinued should be included in the State party's next periodic report.
6. **Ms. Cleveland**, agreeing that the word limit posed a problem, suggested that the Committee should consider whether each individual element of the Committee's requests for follow-up information should be evaluated or whether the State party's response should be assessed as a whole. The former made for a more transparent and less complex process but resulted in longer reports.
7. **Ms. Santana** (Secretariat) noted that the Committee had requested additional information at its previous session in two cases where dialogue was being discontinued.
8. **The Chairperson** suggested that, in deciding which paragraphs of its concluding observations should be followed up, the Committee should keep in mind the nature of the follow-up expected and the implications for its work. He took it that the Committee wished to adopt the proposals made by the Special Rapporteur with regard to Norway.
9. *It was so decided.*

10. **Ms. Cleveland** said that Portugal had been examined in 2012 and had replied to the Committee's concluding observations twice in 2014 and once in 2015. With regard to paragraph 9 of the concluding observations on reducing the number of persons in pretrial detention and issues relating to the duration of such detention, the State party had said that no additional information was available concerning the greater part of the Committee's request, in which respect she proposed a C2 evaluation, but that the number of individuals held in pretrial detention had fallen from 2012 to 2014, which justified an A evaluation. Similarly, the State party's response to the Committee's request for additional information on measures to reduce overcrowding in prisons was largely satisfactory and had been evaluated as A, while the lack of information provided on problems of drug use, rates of HIV/AIDS and hepatitis C in correctional institutions and measures to prevent ill-treatment and other forms of abuse was evaluated as C2. On the issue of domestic violence, the State party's reply had been evaluated as A. The Committee should send a letter informing the State party of the discontinuation of the follow-up procedure and requesting that additional information be included in its next periodic report.

11. **Ms. Waterval** questioned the use of the C2 evaluation in instances where some action had been taken, even if the Committee's recommendations had not been fully implemented.

12. **Mr. Shany** asked whether it was customary for the Committee to downgrade its evaluation of a State party's reply during the follow-up process in any but the most extreme case. In addition, if a State party's reply to the Committee's concluding observations had been evaluated as A, why had further information been requested?

13. **Ms. Seibert-Fohr**, echoing Mr. Shany's remarks, said that a C2 assessment of the follow-up to responses previously evaluated at B2 might reflect unfavourably on a State party's achievements. In the present case, she suggested amending the proposed C2 evaluations to B2, noting that the accompanying text should reflect the new evaluation.

14. **Ms. Cleveland** underscored the methodological importance of the questions at issue. Evaluating each element of a State party's reply without regard to previous evaluations could detract from the overall achievement. Yet the follow-up process should accurately reflect how well States parties had responded to the Committee's requests for information. She would not object to evaluating some of the replies received from Portugal as C1 rather than C2, since there was little difference in the two ratings.

15. **Mr. Rodríguez-Rescia** expressed support for the evaluations proposed by the Special Rapporteur and agreed that each element of a State party's response should be considered separately.

16. **Ms. Seibert-Fohr**, noting that there was a significant difference between the initial B2 evaluations and the C2 grades proposed in the draft report, cautioned against changing the Committee's practice in that regard without warning.

17. **Mr. Iwasawa** took the view that a cumulative evaluation method should be used in the case of follow-up to concluding observations, even if the Committee employed a different method in other aspects of its work.

18. **Mr. Vardzelashvili** said that the methodological questions raised needed to be discussed in greater depth. Evaluations should reflect the actions a State party had taken to apply the Committee's recommendations, not the quality of the information supplied regarding those actions.

19. **Sir Nigel Rodley** highlighted the paradox inherent in any reporting system, namely that a failure to provide information did not necessarily imply that a situation

had worsened. The Committee should consider whether it was evaluating the form or the substance of the State party's replies. Evaluating overall progress in implementing the Committee's recommendations might avoid the problem but carried with it the risk of subjectivity.

20. **Mr. Shany** said that evaluations should be used to draw attention to human rights violations, not to criticize the quality of reporting. As such, the evaluations previously given in the case of Portugal should be retained. If each element of a State party's reply were to be evaluated separately, an overall evaluation would also be needed. However, in view of the extra work that would entail, it was neither advisable nor desirable.

21. **Mr. Seetulsingh** enquired about the purpose and practical impact of evaluations.

22. **The Chairperson**, supported by **Mr. Ben Achour**, said that questions of methodology should be reserved for the Committee's discussion of its working methods. For the moment, the Committee should confine itself to considering whether the evaluations proposed by the Special Rapporteur were justified in light of her explanations.

23. **Mr. Shany** expressed the view that the Committee should first decide exactly what it was evaluating and then decide how to evaluate it.

24. **The Chairperson** said that the Committee had an established system of evaluation and should apply it despite its imperfections. The merits of the system could be discussed on another occasion. He asked whether the Committee agreed with the Special Rapporteur's suggestion to alter the C2 evaluations of the replies by the State party on certain issues to C1.

25. **Mr. Seetulsingh** expressed support for Ms. Seibert-Fohr's view that previous evaluations should not be downgraded.

26. **The Chairperson** pointed out that the Committee had downgraded evaluations in the past.

27. **Mr. Vardzelashvili** said that there was apparently some concern that the Committee was changing its approach. If that was not the case, he could agree to the Special Rapporteur's proposed evaluations.

28. **Sir Nigel Rodley** emphasized that, since the Committee did not make an overall assessment of each State party's progress, the proposed evaluations related only to the most recent replies to the Committee's requests for further information.

29. **Ms. Cleveland**, echoing that view, said that the evaluation system would be meaningless unless each element of a State party's replies was assessed separately.

30. **The Chairperson** took it that the Committee wished to adopt the Special Rapporteur's proposals with regard to Portugal, as orally amended.

31. *It was so decided.*

32. **Ms. Cleveland**, referring to the second response of Hong Kong, China, to the concluding observations on its third periodic report (CCPR/C/CHN-HKG/CO/3), said that the Committee had requested the State party to provide further follow-up information regarding paragraphs 6, 21 and 22.

33. Concerning paragraph 6, it had requested details of the method employed for selecting the Chief Executive and Legislative Council by universal suffrage and the measures taken by Hong Kong, China, to withdraw its reservation to article 25 (b) of the Covenant. The State party having failed in its view to address the question of

selection by universal suffrage or to take the necessary measures to withdraw its reservation to article 25 (b), its reply had been evaluated at C1.

34. With regard to paragraph 21, the Committee had requested information on the incidence of employer abuse and mechanisms for monitoring such abuse and had asked whether the State party envisaged repealing the “live-in requirement” applicable to migrant domestic workers. Concerning employer abuse, there was a case for upgrading the Committee’s initial assessment to B2 in light of the new information provided; regarding accountability mechanisms, a C2 rating was proposed since no new information on the subject had been provided. With respect to the live-in requirement, she considered that the State party had paradoxically merited a C1 rating, having responded to the Committee’s recommendation albeit while indicating that it had no intention of applying it.

35. On the issue of improving the quality of Chinese language education for ethnic minorities and non-Chinese speaking students, a B2 rating had been given and further information had been requested on measures to integrate ethnic minorities in the public education system. A letter would be sent to the authorities concerned reflecting the Committee’s findings.

36. **Mr. Shany** said that, while generally endorsing the proposed grades, he was concerned about the C1 evaluation of the reply relating to the live-in requirement. A refusal by a State party to comply with a decision taken by the Committee merited an E rating in his view.

37. **Mr. de Frouville**, questioning the appropriateness of the rating proposed by Mr. Shany, said that an E evaluation should be reserved for regressive action by States parties.

38. **Ms. Cleveland** said that if it was agreed that an E grade was applicable to regressive action by a State party then the original C1 rating had been correct.

39. **Mr. Shany** said that a decision not to implement a recommendation was different from a failure to provide information or to address an issue. A C1 rating was therefore inadequate for conveying the Committee’s criticism and disappointment.

40. **Mr. Seetulsingh** agreed with Mr. de Frouville and Ms. Cleveland, that the C1 rating was appropriate in the present instance.

41. **Sir Nigel Rodley** said there was a case for introducing a new C3 rating applicable to a refusal to implement the Committee’s recommendation as distinct from an action that contradicted it.

42. **Mr. de Frouville** reiterated his view that the E rating should be reserved for an action contrary to the Committee’s recommendation, otherwise there was a risk that States parties might be more guarded in their responses to the Committee’s questions.

43. **Ms. Seibert-Fohr** proposed changing the rating of the State party from C1 to C2 to reflect the fact that it had not provided new and relevant information.

44. **Mr. Iwasawa** said that States often refused to implement the Committee’s Views and the methodology for assessing their replies should be reviewed.

45. **Mr. Shany** agreed with the previous speaker that the Committee should develop new criteria with regard to rejection of the Committee’s recommendations.

46. **Mr. Politi** said that, for the purposes of the current discussion, a rating of C2 was appropriate.

47. **Ms. Cleveland** agreed with the suggestion that the Committee could consider the introduction of a new C3 rating to be applied in the case of a refusal to implement the Committee's recommendation.

48. **The Chairperson** said he took it that the Committee wished to adopt the proposals contained in the report of the Special Rapporteur with regard to Hong Kong, China.

49. *It was so decided.*

50. **Ms. Cleveland**, referring to paragraph 12 of the concluding observations on Bolivia (CCPR/C/BOL/CO/3), said that the State party had been asked: (a) to investigate human rights violations in the period 1964-1982; (b) to ensure that the Armed Forces cooperated fully in the investigations; (c) to revise standards of proof and establish mechanisms for appeal and review of applications for compensation; and (d) to guarantee full right of redress to victims.

51. With respect to (a), a C2 evaluation had been given since the State party had referred to information already contained in its third periodic report and had failed to provide new information on the progress of the Truth Commission. Concerning (b), a D1 evaluation was proposed since the State party had not provided information on measures to ensure that victims had due access to information. Regarding (c), a C2 evaluation was recommended in the absence of relevant information on action to revise standards of proof in relation to acts for which reparation was sought. A C2 rating was likewise recommended in relation to (d) since the State party's report had referred to human rights violations that had occurred in 1998 rather than those dating from the period 1964-1982, as the Committee had requested.

52. With regard to paragraph 13, it was recommended that the State party amend current legislation to exclude human rights violations from military jurisdiction; amend the Criminal Code to include a definition of torture in line with the Convention; ensure that all acts of torture were promptly investigated; and establish a national mechanism for the prevention of torture. Concerning the amendment of the rules of criminal procedure, a C2 evaluation was proposed since the State party had failed to provide any information indicating that relevant measures were in progress. In the absence of information on cooperation by the military, the Committee reiterated its previous recommendation and proposed a D1 rating. A D1 rating was also recommended with regard to the prompt investigation of torture, on which the State party had offered no information. The Committee noted the establishment of the Service for the Prevention of Torture (SEPRET) but requested further information on its structure and scope of authority.

53. With respect to paragraph 14 of the concluding recommendations, calling on the State party to speed up proceedings relating to the incidents of racial violence that had occurred in Pando and in Sucre in 2008 and to provide full redress for victims, the State party had stated that the cases concerned were at the oral trial stage and were being followed up by the public prosecutor in compliance with procedural guidelines. On the basis of the information provided by the State party regarding the state of criminal proceedings, it was proposed that the Committee award of a B2 rating, linked to a request for information on measures to offer redress to victims. A letter would be sent to the State party reflecting the Committee's conclusions.

54. **The Chairperson** said he took it that the Committee wished to adopt the proposals made by the Special Rapporteur with regard to Bolivia.

55. *It was so decided.*

56. **Ms. Cleveland**, referring to the concluding observations on the initial report of Djibouti (CCPR/C/DJI/CO/1), said that the State party had been largely unresponsive

to the Committee's recommendations. Paragraph 10 of the concluding observations had requested the State party to criminalize domestic violence, including marital rape, guarantee that such cases were thoroughly investigated and prosecuted, provide law enforcement officers with appropriate training, provide adequately resourced shelters and organize awareness-raising campaigns. The State party had provided minimal information in reply, largely limiting itself to a reference to the Family Code (2002). A D1 evaluation was therefore recommended, and the Committee might wish to underline the inadequacy of the State party's response and to reiterate its recommendations.

57. Paragraph 11 of the concluding observations requested the State to ensure that allegations of torture and ill-treatment were thoroughly investigated and perpetrators were prosecuted; establish an independent mechanism to investigate complaints of misconduct by law-enforcement officials; ensure that such officials received training on torture and ill-treatment; and integrate the Istanbul Protocol criteria in training and manuals. The State party had responded by saying that the allegations of torture and ill-treatment were false, that it was continuing to train officials and that the issue of the Istanbul Protocol was pending. D1 evaluations had been given to most of the State's replies in view of their failure to respond to the Committee's recommendations. With respect to the question of training, a B2 rating was proposed, linked to a request for additional information on future training programmes and plans to integrate the Istanbul Protocol into such programmes.

58. With regard to paragraph 12 addressing questions of freedom of association, assembly and expression and inviting the State party to respect those rights and guarantee them in law and practice, to revise its legislation, to review registration requirements for newspapers, to abolish prison terms for defamation and similar media offences, to expedite the functioning of the National Communication Commission, to release and rehabilitate imprisoned journalists and to give space to civil society organizations, the State party had simply repeated information contained in its periodic report and had consequently been given a D1 evaluation. She suggested that the Committee clarify its evaluation by pointing out that the State party had not provided any new information, had not responded to most of the Committee's recommendations and had not taken measures to implement them. A letter would be sent reflecting the Committee's findings.

59. **Ms. Seibert-Fohr**, supported by Ms. Waterval, queried the D1 evaluation, saying that, whereas matters of procedural compliance were covered by category D, questions of substantive compliance came within the C category. Since the State party had replied to the Committee, a C2 rating might be more appropriate.

60. **Ms. Cleveland** said that the State party had given a partial response to the recommendations but it had not replied to some substantive points. If the Committee preferred to retain the D1 evaluation for situations in which no response at all had been received, she could agree to a C2 evaluation in the present case.

61. **The Chairperson** took it that the Committee wished to adopt the proposals made by the Special Rapporteur with regard to Djibouti.

62. *It was so decided.*

Ms. Cleveland, a national of the United States of America, withdrew from the meeting in preparation for a discussion on that country.

63. **Mr. Ben Achour** (Alternate Rapporteur for follow-up on concluding observations), referring to paragraph 5 of the Committee's concluding observations (CCPR/C/USA/CO/4), said that the United States of America had been invited to ensure that (1) all cases of unlawful killing, torture and other ill-treatment, unlawful

detention and enforced disappearance were effectively and impartially investigated, that perpetrators, particularly persons in positions of command, were prosecuted and sanctioned, and that victims were provided with effective remedies; (2) that the responsibility of those who provided legal pretexts for illegal behaviour should be established; (3) that the State party should consider full incorporation of the doctrine of “command responsibility” in its criminal law; and (4) that the report of the Senate Special Committee on Intelligence into the CIA secret detention programme should be declassified and made public.

64. While information had been provided on the prosecution of law enforcement officials and the conviction of Blackwater contractors for their crimes in Iraq, no information had been received on investigations and convictions relating to senior persons within the Administration of the State party nor on reports that Guantánamo detainees had been deprived of the opportunity to seek judicial remedy for violation of their human rights. In view of the partial response received to the Committee’s recommendation, a B2 evaluation was recommended. Concerning the second part of paragraph 5, the State party had indicated that there had been prosecutions but no convictions and the Committee therefore proposed a C1 evaluation. A similar evaluation was proposed in light of the State party’s negative response to the recommendation to incorporate the doctrine of command responsibility into criminal law. Finally, an evaluation of B1 was suggested with respect to the information that over 500 pages of the Senate Select Intelligence report had been declassified but that over 6,000 pages remained classified.

65. Concerning paragraph 10 of the concluding observations, a C1 evaluation was proposed since no information had been provided on measures taken since the examination of the State party’s report to bar domestic violence offenders from possessing firearms. A C1 evaluation was also recommended with respect to progress in rolling back Stand Your Ground laws at state level.

66. Concerning paragraph 21, recommending that the State party should expedite the transfer and periodic review of Guantánamo detainees, should ensure their trial or immediate release and should move to close the Guantánamo facility, an evaluation of B1 was proposed, despite concern that there had been no new releases from Guantánamo since January 2015. An E evaluation was recommended in respect of the practice of holding persons in administrative detention without charge in Guantánamo and of plans by the State party to continue to prosecute them by military commission, contrary to the Committee’s recommendations.

67. With respect to paragraph 22 of the concluding observations requesting the State party to ensure that its surveillance activities within and outside the United States conformed to its obligations under the Covenant, evaluations of C1 were recommended having regard to administrative measures in the State party that appeared to infringe rights under article 17 of the Covenant. Specifically, the Committee was concerned that no provision was made for ensuring judicial involvement in the authorization and monitoring of surveillance measures and for refraining from imposing mandatory retention of data by third parties. The failure to provide information on access to remedies for affected persons in cases of abuse justified a D1 evaluation.

68. **Mr. Shany**, referring to paragraph 21, said that he agreed with the B1 evaluation regarding the release of Guantánamo detainees. However, while the rate of release was very slow, the language used in the evaluation should perhaps be adjusted to take account of the fact that six more detainees had been released in June 2015. While he had initially been in favour of the E rating proposed in evaluation paragraph (ii), he thought the assessment might be modified in light of the evaluation adopted in the case of China, Hong Kong. The paragraph could be amended by adding the words “in

many cases, for over a decade” after “without charge or trial” to draw attention to the extraordinary length of the detentions.

69. In the case of paragraphs (a) and (b) of the evaluation concerning paragraph 22, a B2 rating might be more appropriate than C1 given the indication by the State party that it was reviewing the situation.

70. **Ms. Seibert-Fohr** said she would prefer to remove the reference, in paragraph (i) of the evaluation of the State party’s response to paragraph 5, to “reports that current and former Guantanamo detainees have been deprived of the ability to seek judicial remedy”, since such reports had not been verified or put to the State party. The statement could be rephrased as a request for clarification concerning the possibility of seeking judicial remedy for torture.

71. In the case of paragraph (i) of the evaluation relating to paragraph 21 of the concluding observations, she believed that B2 might be a more appropriate evaluation than B1 since the State party’s comment that it was taking “feasible steps” to expedite the review and transfer of detainees was rather vague and would not necessarily translate into substantive action.

72. With reference to paragraph 22, she thought that the Committee should respond to the claim of extraterritoriality by linking a C2 rating with a request for further information on the State party’s position on its obligations under article 17 of the Convention and by limiting its subsequent evaluation to measures taken with regard to surveillance activities within the United States.

73. **Sir Nigel Rodley** said that the Committee should not place too much emphasis on the issue of extraterritoriality. While the State party had disagreed with the Committee’s approach, it had responded on the question of substance. He was reluctant to take too hard a line against the State party for maintaining its doctrinal position, even if it was one that the Committee could not accept.

74. With regard to paragraph (iii) of the evaluation concerning paragraph 5, he found it strange that the State party should be asked to incorporate the doctrine of command responsibility in its criminal law, since command responsibility - in common law jurisdictions at least - was a doctrine of military rather than civilian responsibility. The State party had moreover indicated in its reply that statutes relating to conspiracy and aiding and abetting could be used to reach senior officials. He therefore considered that the response of the State party merited an A rather than a C rating, being in his view “largely satisfactory”.

75. **Mr. Shany** said that command responsibility was a doctrine of international criminal law applicable to both military and civilian superiors, under article 28 of the Rome Statute of the International Criminal Court. The Committee’s concern was that the responsibility for alleged human rights violations stopped at a very low level and never reached the higher echelons of power within the State party. The purpose of the recommendation had been to urge the United States not to rely on doctrines of criminal complicity to address issues of impunity and non-accountability and to introduce norms enabling the criminal responsibility of senior officials to be identified. He therefore favoured retaining paragraph (iii) of the evaluation in order to send the relevant message to the State party.

76. **Mr. Seetulsingh** said it would be helpful to receive clarification on the status of command responsibility in United States law, since the doctrine would normally have its place in a military rather than a criminal code. The Committee had requested the State party to incorporate command responsibility in its criminal law, not its criminal code. He agreed on the need to rephrase the sentence expressing the Committee’s regret that no action had been taken in that regard.

77. **Mr. Politi**, endorsing the remarks of Mr. Shany, said that the threshold of responsibility was higher under civil law than under military law, but the doctrine of command responsibility was applicable to both under international criminal law.

78. **Mr. Rodríguez-Rescia** said that he agreed with the approach of Mr. Shany regarding command responsibility and supported the suggestion by Ms. Seibert-Fohr to include a response on the issue of extraterritoriality in its evaluation with respect to paragraph 22.

79. **Sir Nigel Rodley** agreed with Mr. Shany and Mr. Politi that the doctrine of command responsibility was applicable to all crimes under international law. Noting that paragraph (iii) of the proposed evaluation did not specify the scope of application of the doctrine, he suggested amending the first sentence to read: “The Committee regrets that no action has been taken to incorporate the doctrine of command responsibility for crimes under international law.”

80. **Mr. Ben Achour**, referring to paragraph 21, said that he accepted the proposal of Mr. Shany to modify the E rating in paragraph (ii) of the evaluation. He could also accept the proposal by Ms. Seibert-Fohr to downgrade the rating in paragraph (i) from B1 to B2. The suggestion by Sir Nigel to amend paragraph (iii) of the evaluation concerning paragraph 5 and to refer to the doctrine of command responsibility “for crimes under international law” was likewise acceptable given the universal agreement that command responsibility was applicable to civil as well as military jurisdiction.

81. In the absence of any objection, **the Chairperson** said that the proposal by Sir Nigel Rodley to amend paragraph 5 (iii) was accepted.

82. *It was so decided.*

83. **Ms. Seibert-Fohr**, referring to paragraph 5, said that Mr. Ben Achour had not responded to her suggestion that the penultimate sentence of paragraph (i) of the evaluation should be recast in the form of a request for clarification concerning the possibility of seeking judicial remedy for torture.

84. **The Chairperson** took it that the Committee had no objection to reformulating the relevant subparagraph in line with Ms. Seibert-Fohr’s suggestion.

85. *It was so decided.*

86. With reference to paragraph 21 of the concluding observations, he took it that the Committee wished to adopt Ms. Seibert-Fohr’s proposal to replace the B1 with a B2 assessment and Mr. Shany’s proposal to replace the second assessment of E with C2.

87. *It was so decided.*

88. **Mr. Shany**, referring to paragraph 21, reiterated his proposal that the first sentence of paragraph (i) of the Committee’s evaluation should end with “until 2020”. He further proposed that the words “in many cases for over a decade” should be inserted after “without charge or trial” in paragraph (ii) of the evaluation.

89. *It was so decided.*

90. **Ms. Seibert-Fohr**, referring to paragraph 22, said that the State party had claimed that its obligations under the Covenant applied only with respect to individuals who were both within its territory and its jurisdiction. In the case of Guantánamo, it had undertaken to respond to the Committee’s concerns. In the case of extraterritorial surveillance, it had maintained its position that article 17 of the Covenant was applicable only to surveillance within the United States. She therefore proposed replacing the original assessment of C1 with C2.

91. **Mr. Shany** said he would not object to the addition of wording that underscored the need to report on surveillance activity, regardless of its location. However, he would be reluctant to identify it as a new follow-up issue, given the State party's doctrinal position.

92. **Mr. de Frouville** expressed support for Ms. Seibert-Fohr's proposal. He also felt that the Committee should issue separate evaluations of paragraphs (a) and (b) of the concluding observation.

93. **Ms. Seibert-Fohr** proposed the following wording: "The Committee notes that the State party has not provided information on measures taken to respond to its observation regarding surveillance activities outside the United States." It would then request additional information in that regard.

94. **Mr. Ben Achour** said that the State party, on account of its doctrinal position, would certainly not respond to any such request.

95. **The Chairperson**, speaking as a member of the Committee, said that he agreed with Ms. Seibert-Fohr that the Committee should mention the State party's failure to respond to its recommendation and should amend the evaluation to C2.

96. **Mr. Shany** said he believed that the State party had in fact reported on surveillance activities outside the United States, for instance in connection with Presidential Policy Directive 28. He therefore suggested that the Committee should simply reaffirm, at the end of evaluation paragraphs (a) and (b), its recommendation that the State party should provide information concerning all individuals whose communications were under direct surveillance, regardless of their location.

97. **Mr. de Frouville** said that the Committee had insisted, during its dialogue with other States parties concerning the issue of territoriality, that its interpretation of the Covenant took precedence over theirs. It was important to reaffirm that position in the case of the United States.

98. **Sir Nigel Rodley** said that the Committee's doctrine was set forth in general comment No. 31, which stated that article 2, paragraph 1, of the Covenant was applicable to anyone within the power or effective control of the State party, even if not situated within its territory. Numerous considerations had therefore to be borne in mind before deciding that there was no difference between persons located abroad and within the State party. He could, however, accept Ms. Seibert-Fohr's proposal since it did not raise the doctrinal issue.

99. **Ms. Seibert-Fohr** said that the concluding observations on the State party's report reflected the Committee's interpretation of article 2 of the Covenant. Any claim that article 17 was not applicable to the State party was thus at odds with the concluding observations. By way of an attempt to reconcile differing viewpoints, she suggested adding the following sentence to the first paragraph of the evaluation: "The Committee also requests information on measures taken to ensure that surveillance activities outside the United States comply with its obligations under the Covenant, including article 17."

100. **Sir Nigel Rodley** said that he was unable to support the proposal on account of the reference to compliance with the State party's obligations, which was incompatible with general comment No. 31. The wording adopted in the concluding observations could not be invoked to change the Committee's doctrinal position.

101. **Mr. Ben Achour** expressed support for Ms. Seibert-Fohr's proposal.

102. **The Chairperson** proposed a formulation along the following lines: "In view of the failure of the State party to provide information on measures taken to ensure that any interference with the right to privacy complies with the principles of legality,

proportionality and necessity, regardless of the nationality or location of the individuals whose communications are under direct surveillance, the Committee reiterates its request for information from the State party.”

103. **Mr. Shany** proposed inserting the word “specific” before “information” in the final phrase, since he believed that the State party had provided a certain amount of general information.

104. **The Chairperson** said he took it that the Committee wished to adopt the proposals made by the Alternate Rapporteur with regard to the United States of America.

105. *It was so decided.*

106. **The Chairperson** emphasized the importance of the Committee’s discussions on follow-up. It was essential to ensure that the responses of States parties were properly evaluated. More specific criteria should perhaps be identified at future meetings concerning methods of work.

The meeting rose at 1.05 p.m.