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Eighteenth meeting of chairpersons
of the human rights treaty bodies
Geneva, 22-23 June 2006

**REPORT OF THE MEETING OF THE WORKING GROUP
ON RESERVATIONS**

1. The working group on reservations met in Geneva on 8 and 9 June 2006. The fourth inter-committee meeting and the seventeenth meeting of chairpersons of the human rights treaty bodies had requested the establishment of the working group to examine the report on the practice of human rights treaty bodies with respect to reservations to international human rights treaties and report on its work to the fifth inter-committee meeting (HRI/MC/2005/5).
2. Ms. Jane Connors, Senior Administrator, Treaties and Follow-up Unit of the Treaties and Council Branch, opened the meeting. She welcomed the members of the working group, and explained the importance of defining a common approach to reservations as part of the process of harmonization of the working methods of treaty bodies.

Election of the Chairperson-Rapporteur of the meeting

3. On 8 June 2006, the participants elected Sir Nigel Rodley, a member of the Human Rights Committee, to be the Chairperson-Rapporteur of the meeting. They then adopted the programme of work, which is contained in annex 1 of the present document. The list of participants designated and authorized by their respective treaty body to present its views regarding the reservations is contained in annex 2.

Discussion on treaty body practice

4. The meeting of the working group on reservations took place in the spirit of the Vienna Declaration and Programme of Action, adopted in 1993, according to which States are encouraged “to consider limiting the extent of any reservations they lodge to international human rights instruments ..., formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them”.

5. While the participants in the working group regretted the absence of representatives of the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women, they studied the information transmitted by those two Committees.

6. On 8 June 2006, the participants discussed their treaty body's practice in respect of reservations. Sir Nigel Rodley, as a member of the Human Rights Committee, informed the working group that the Committee's position was based on its general comment No. 24 (1994), in which it had decided that it was competent to assess the compatibility of a reservation with the object and purpose of the International Covenant on Civil and Political Rights, identify the criteria to be applied in that process and decide the consequences of a reservation deemed invalid. He said that the Committee had not judged the validity of a specific reservation for several years, although it had on several occasions during dialogues with certain States parties requested that they withdrew their reservations, which was a practice followed for most, if not all, reservations and was therefore not an indication of their validity.

7. Mr. Jean Zermatten said that the Committee on the Rights of the Child was mainly concerned about reservations of a general nature and their scope. The Committee had examined some of those reservations and the States in question had been encouraged to redraft them more precisely, restrict them or withdraw them. He emphasized that the Committee's concern was not to detract from the universality of the Convention on the Rights of the Child, even if it remained concerned about reservations. Although the Committee intended to draft a general comment on reservations, the question had not yet been included on the agenda.

8. Mr. Philippe Texier informed the working group that the Committee on Economic, Social and Cultural Rights had never had a general discussion on reservations, since the number of reservations relating to the International Covenant on Economic, Social and Cultural Rights was not large, and mainly concerned articles 6 to 8. Like the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights adopted a conciliatory approach towards States that had entered reservations.

9. Mr. Ahmed Assan El-Borai explained that the Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families had not yet had an opportunity to hold a general discussion on reservations, since it had only recently examined its first initial country report.

10. Mr. Guibril Camara said that the Committee against Torture had likewise not had a general discussion on reservations. He recalled that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment seemed to allow only reservations to article 30. Since the prohibition of torture constituted a peremptory norm of international law, no reservation to article 1 should be permissible. The Committee would have to look into that question.

11. In the absence of a representative of the Committee on the Elimination of Discrimination against Women, the secretariat explained that numerous reservations of a general nature had

been made, some of which had raised many objections from other States parties. Reservations to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women were not permissible. The Committee had adopted several general recommendations in which it had expressed concern about the large number of reservations, and also a declaration on reservations in 1998.

12. Following the presentations made by each participant on recent developments in his Committee, Sir Nigel Rodley said that the treaty bodies have to remain cautious, and not conclude too hastily that a reservation was invalid. It would be better to wait for a State party to invoke a reservation, at which point the treaty body concerned would not be able to avoid assessing its compatibility. Mr. Jean Zermatten recalled that a general reservation was not necessarily invalid, and that a dialogue must be established with the State party in question in order to gain a better understanding of the scope of the reservation. Mr. Philippe Texier considered that the treaty bodies should adopt a fairly flexible position on reservations.

13. Mr. Guibril Camara said that the provisions of the Vienna Convention on the Law of Treaties were applicable to the human rights instruments, and that if a reservation was invalid, treaty bodies should accept the consequences and disregard it, without waiting for other States parties to raise objections to it. The difficulty for the treaty bodies lay in identifying the concept of the “object and purpose” of the treaty in question. In that regard, Sir Nigel Rodley recalled that general comment No. 24 identified certain assessment criteria and referred, inter alia, to the concept of a peremptory norm of international law.

14. The members of the working group benefited from information provided by Mr. George Korontzis, from the secretariat of the International Law Commission (ILC), on the Commission’s most recent work. Meetings had been organized between ILC and each treaty body, with the exception of the Committee on the Elimination of Discrimination against Women; that had led to changes in the positions adopted by the Commission. However, there still seemed to be disagreement on the issue of the “severability” of a reservation declared invalid. The Commission had not yet addressed that issue, but would certainly do so during its debate on the eleventh report of the Special Rapporteur on reservations to treaties, which would address the consequences of invalidity. The possibility of a meeting between the Special Rapporteur and the working group was mentioned.

15. On 9 June 2006, the working group discussed the recommendations to be made to the fifth inter-committee meeting. The majority of the members considered that in most cases, particularly during the consideration of periodic reports, it was not necessary for treaty bodies to take a decision on the validity of a reservation or to take action accordingly. On the other hand, Mr. Guibril Camara considered that the treaty bodies could and should assess the validity of reservations.

Recommendations of the working group

16. The participants in the working group decided to submit the following points for the attention of the fifth inter-committee meeting:

1. The working group welcomes the report on the practice of human rights treaty bodies with respect to reservations to international human rights treaties (HRI/MC/2005/5) and its updated version (HRI/MC/2005/5/Add.1) which the secretariat had compiled for the fourth inter-committee meeting.
2. The working group recommends that while any statement made at the time of ratification may be considered as a reservation, however it was termed, care must be exercised before concluding that the statement should be considered as a reservation, even if the State had not used that term.
3. The working group recognizes that, despite the specific nature of the human rights treaties, which do not constitute a simple exchange of obligations between States but are the legal expression of the essential rights that each individual must be able to exercise as a human being, general treaty law is applicable to the human rights instruments and must be applied taking fully into account their specific nature, including their content and monitoring mechanisms.
4. The working group considers that when reservations are permitted, whether explicitly or implicitly, they can contribute to the attainment of the objective of universal ratification. Reservations which are not permitted, including those that are incompatible with the object and purpose of the treaty, do not contribute to attainment of the objective of universal ratification.
5. The working group considers that treaty bodies are competent to assess the validity of reservations, in order to carry out their functions, and, in the event, the implications of a finding of invalidity of a reservation, particularly in the examination of individual communications or in exercising other fact-finding functions in the case of treaty bodies that have such competence.
6. The working group considers that the identification of criteria for determining the validity of reservations in the light of the object and purpose of a treaty may be useful not only for States when they are considering making reservations, but also for treaty bodies in the performance of their functions. In this regard, the criteria contained in the draft methodological guidelines set out in the tenth report of the Special Rapporteur of the International Law Commission on reservations to treaties (A/CN.4/558/Add.1) constitute a step forward. The working group appreciated its dialogue with the International Law Commission and welcomes the prospect of further dialogue.
7. The working group considers that the only foreseeable consequences of invalidity are that the State could be considered as not being a party to the treaty, or as a party to the treaty but the provision to which the reservation has been made would not apply, or as a party to the treaty without the benefit of the reservation. The consequence that applies in a particular situation depends on the intention of the State at the time it enters its reservation. This intention must be identified during

a serious examination of the available information, with the rebuttable presumption that the State would prefer to remain a party to the treaty without the benefit of the reservation, rather than being excluded.

8. The working group welcomes the inclusion of a provision on reservations in the draft harmonized guidelines on reporting under the international human rights treaties, including the common core document and treaty-specific reports (HRI/MC/2006/3). It emphasizes the importance of dialogue between the treaty bodies and States making reservations; such dialogue would aim to distinguish more precisely the scope and consequences of reservations and possibly encourage the State party to reformulate or withdraw its reservations.
9. The working group recommends that another meeting be convened in the light of the latest discussions in the International Law Commission on reservations to treaties.

Annex 1

PROGRAMME OF WORK

8 June 2006

Morning

Opening statement (Ms. Jane Connors, Senior Administrator, Treaties and Council Branch)

Election of the Chairperson-Rapporteur for the meeting and adoption of the programme of work

Discussion on recent developments within the treaty bodies (presentation by each participant on reservations that have arisen in the committee that he represents)

Discussion on recent developments within the treaty bodies (continued)

Afternoon

Discussion on the report on the practice of human rights treaty bodies with respect to reservations to international human rights treaties (HRI/MC/2005/5 and Add.1)

Discussion on the report on the practice of human rights treaty bodies with respect to reservations to international human rights treaties (continued)

Presentation of the work of the Special Rapporteur of the International Law Commission on reservations to treaties (Mr. George Korontzis, Codification Division, Office of Legal Affairs)

Preliminary discussion on recommendations to the inter-committee meeting and the meeting of chairpersons

9 June 2006

Morning

Discussion on the approach and suggestions of the Special Rapporteur of the International Law Commission on reservations to treaties

Perspectives for a common approach to reservations

Afternoon

Discussion on recommendations to the inter-committee meeting and the meeting of chairpersons

Preliminary discussion on recommendations to the inter-committee meeting and the meeting of chairpersons (conclusion)

Conclusions

Annex 2

LIST OF PARTICIPANTS

Committee on Economic, Social and Cultural Rights	Philippe Texier
Human Rights Committee	Sir Nigel Rodley (Chairperson-Rapporteur)
Committee against Torture	Guibril Camara
Committee on the Rights of the Child	Jean Zermatten
Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families	Ahmed Hassan El-Borai
