場次一：專題演講
PANEL I: SPEECH

主　　持　　人：陳惠馨 教授
(PROFESSOR HWEI-SYIN CHEN)
/ M O D E R A T O R

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人權事務委員會審查國家報告之程序與目的－我的廿年經驗

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壹、介紹

公民政治權利國際公約第 40 條第一項明示:「本公約締約國承允依照下列規定，各就其實施本公約所確認權利而採取之措施，及在享受各種權利方面所獲之進展，提具報告書...」; 第二項:「所有報告書應交由聯合國秘書長轉送(人權事務)委員會審議。如有任何因素及困難影響本公約之實施，報告書應予說明。」; 第四項:「委員會應研究本公約締約國提出之報告書...委員會應向締約國提送其報告書及其認為適當之一般評議。」,以及第五項:「本公約締約國得就委員會可能依據本條第四項規定提出之任何評議向委員會提出意見。」

因此，人權事務委員會（Human Rights Committee or HRC）「審議」締約國報告的框架被建立:首先,締約國針對他們國內如何落實公約提出報告;第二步，委員會審議並研究這些報告;第三步，委員會將自己版本的報告附上一般性意見(general comments)送回締約國;第四步，締約國也需要提交自己對委員會意見的觀察。本篇短文是以作者擔任人權事務委員會委員的二十年經驗為基礎，以此寫作順序試圖釐清「審議」(consideration)的目的與程序：(1) 審議的概括目的；(2) 仔細地檢驗審議的步驟與問題；以及(3) 與其他國際監督方式比較之下的審議的效果及評估。

貳、審議（the Consideration）的目的

審議的框架，如同上述，指出了審議作為一個整體可能也被視為監督國家實現國際人權標準的系統。毋需多言，由於缺乏世界政府、立法機關以及世界司法系統，當今的人權保障實際是依賴於各個主權國家的內國體制。然而，如果我們僅將人權保障留給國家體制，我們便無法避免由國家權力所做的人權侵害，如納粹迫害猶太人或是南非的種族隔離政策。為了防止這些侵害，我們必須建立一個人權保障的國際體系，其本質是(１)釐清人權的普世標準，(２) 且因此標準的落實仰賴國內的系統，(２)本委員會需要監督國家落實此標準。

在二次世界大戰結束後，聯合國(United Nations or UN)的建立並非只是為了維持國際和平與安全，也是為了要提倡國際在經濟及社會事務上的合作，包括人權保障。1948 年聯合國大會(UN General Assembly)通過了世界人權宣言(the Universal Declaration of Human Rights)，提出普世人權標準，接著在 1996 年大會通過了兩個人權國際公約：經濟社會及文化權利國際公約(International Covenant on Economic, Social and Cultural Rights or ICESCR)，以及，公民政治權利國際公約(International Covenant on Civil and Political Rights or ICCPR)。兩個公約詳細的說明了宣言中的規定，以釐清人權的普世適用標準。再者，兩公約也都採用了透過審議國家報告的方式監督公約締約國的落實情況。因此，「審議」的目的很明確：它是為了檢驗或監督國家對於國際人權標準的落實。

參、審議的程序

一、國家報告的準備與提出

如上所述，公民政治權利國際公約（以下簡稱 ICCPR）規定公約締約國需要提出國家報告給聯合國人權事務委員會作為委員會審議。至於經濟社會文化權利國際公約（以下簡稱 ICESCR），則規定了公約締約國的報告要交由聯合國經濟及社會理事會（Economic and Social Council or ECOSOC)審議。然而，當人權事務委員會委員因其「個人」能力而被選舉出來時，經濟及社會理事會的成員卻僅是聯合國成員國代表，而由這樣的代表來審議代表本國或其他國家的報告都是非常不適當的。因此，在 1987 年經濟及社會理事會決定設立經濟社會及文化權利委員會(the Committee on Economic, Social and Cultural Rights or CESCR)，接著其委員也是基於他們的「個人」能力而被選舉出來，與人權事務委員會相同。

任何情況下，ICCPR 的締約國對必須在其加入公約生效的一年內為此提出初次報告書（initial reports），及之後在任何人權事務委員會請求之時。後者的此類報告稱作「定期報告」 (periodic reports)，通常人權事務委員會要求每五年左右提交一次。還有第三種報告叫做「特別報告」（special reports），HRC 在特殊狀況如政變或是天災發生時要求提交。以上任何一種的國家報告都是由公約締約國自己準備並提交。許多國家透過與多種部門合作以準備報告，如外交、司法、工業、財政、勞工、教育以及治安部門等，雖然經常由外交或是司法部門為主導。有一些國家允許 NGOs 參與報告的準備，但報告的提交仍屬國家的職責。自然地，政府難得會提出一份批評自身人權政策或活動的報告，在這一點上，NGOs 的報告而言就扮演了一個很重要的角色，讓人權事務委員會可以針對該國相關人權狀況做出一個客觀的分析。

至於報告的長度，有些非常短，甚至連十頁都不到，僅列舉了相關國內法律的規定而未說明具體適用到現實的狀況為何。少數報告則是非常長，長至超過五

百頁，內有過多細節資訊及大量的統計資料。平均來說，一份報告的長度大約是五十頁 A4 紙張，以單行間距繕打。

關於報告的內容，人權事務委員會通過了提供給公約締約國準備報告的一般指導原則。簡言之，報告應該分成兩部分：第一部分處理人權保障的一般法律框架，第二部份則釐清特定種類的人權保障，同 ICCPR 第三章中的規定（從第六條生命權至第二十七條少數團體的權利）。

二、人權事務委員會及其年度會期

人權事務委員是由 ICCPR 的公約締約國於大會中選舉出十八位委員所組成。選舉是隔年的九月、於聯合國大會年度會議前舉行，改選所有委員的半數席次。候選人由公約締約國提名，但他們因個人能力被選出，且獨立於任何締約國之外行使職權。他們的任期是四年，但可以連選連任。因為同一批委員一起服務兩年，此局處由主持人、三位副主持人以及報告員組成，分別代表五個聯合國選區：非洲、亞洲、拉丁美洲、東歐及西方。委員會中委員資格並沒有嚴格的地理分配，但在我 1987 年加入人權事務委員會時，非洲、亞洲、拉丁美洲、東歐各有三位，其他的委員則是從西方來的。而關於委員們的背景，大多數是學者、有四分之一是內國法律從業人員、其他的則是退休的公務員或是政治家。

人權事務委員會每年有三次會期，每會期為三週；春季會期是從三月中旬至四月初於紐約的聯合國總部開會；夏季會期則是從七月中旬至八月初，秋季會期是從十月中旬至十一月初，皆在日內瓦的聯合國辦公室開會。通常人權事務委員會每天有兩次會議，從 10:00 到 13:00，以及 15:00 至 18:00。因此，每周有 10 個會議，每會期有 30 次會議，也就是每年 90 次會議。人權事務委員會的工作是由人權事務高級專員辦事處（UN Office of High Commissioner for Human Rights）中人員所組成的秘書處提供協助。

三、對報告的審議 (Consideration of Reports)

公民政治權利國際公約於 1976 生效，而人權事務委員會於 1977 開始運作。ICCPR 首先通過了程序法規，規定將被人權事務委員會審議國家報告的公約締約國代表必須參加會議。此代表要做口頭報告，委員會委員口頭提問，接著代表可口頭回應。此程序可能導致相同或相似的議題，為了避免這樣的重複，人權事務委員會決定通過＜議題清單＞，一份對代表提出的問題書面摘要，這對於審議程序的流程順暢被證明相當有效。關於這一點，每位委員被指定為一個特定公約締約國的報告員（country-rapporteur），他／她的工作是協同秘書處準備起草針對該公約締約國需要提給全體會議批准的議題清單。接下來，委員會會把這些書面問題濃縮到 20 至 30 條，近年來委員會開始在公約締約國提出報告之審議會期的前一個會期寄送書面的議題清單給該國。有些國家會回覆議題清單上的問題寄回作為回應，因此也加速了報告審議的速度。

人權事務委員會早期的每位委員都有些時間做口頭評論，與國家代表做意見交流。這裡同樣地，這些委員們的評論經常是重複或有時矛盾，造成國家代表因而對於人權事務委員會做出的報告評估感到混淆。因此，人權事務委員會通過一個代表委員會整體的＜觀察結論＞（Concluding Observations）的書面文件， 基本上符合第 40 條第四項所指出的「一般性意見」(general comments)。當今的＜觀察結論＞包含三個部份：第一部分是客觀地描述審議程序如何進行；第二部份強調報告國人權狀況的優點或是改善；第三部份點出報告國人權狀況的缺失或問題，並給予改善這些狀況的建議。第三部份期待締約國能接受這些建議，並且在下次該國的國家報告中點出狀況的改善。此外，委員會從 20 多個建議中選出幾個，要求締約國在短期之內回應，因為像是解除戒嚴或是釋放政治犯等建議，若要到下次報告才改正這些問題就太遲了。程序的最後階段稱為「觀察報告的追蹤」（Follow-Up to the Concluding Observations），相關締約國對於此追蹤的回應還不錯，很可能是因為第 40 條第五項的規定。

肆、審議程序的效果或評估 (Effect or Evaluation of Consideration Procedure)

如上所述，人權事務委員會一直盡最大努力發展其審議程序。然而，委員會也絕對不能忘記其工作本質上是建議，而「觀察報告的追蹤」甚至並不是個有法律拘束力的程序。基於這個理由，有時人權事務委員會的任何活動都被批評是無涉法律或是無意義的。相反的，歐洲人權公約（European Convention on Human Rights），有許多附加條款提供了司法救濟給人權侵害中的受害者，這些條款是有法律拘束力的。美洲人權公約（American Convention on Human Rights）以及非洲人權憲章（African Charter on Human and Peoples' Rights）也都是如此。

有兩個論點或許可用於回應這些批評。第一個，有一些本質為建議的行動可以實質改善人權侵害的狀況。比如說：在審議日本的初次國家報告時，一些委員指出日本國籍法違反了公民政治國際權利公約第三條的性別平等原則。日本政府相當看重此意見並向法律專家委員會（the Board of Legal Experts）諮詢，當該委員會仍在討論此議題時，聯合國大會通過了「消除對婦女一切形式歧視公約」（Convention on the Elimination of All Form of Discrimination against Women），日本國內的婦女 NGOs 也向日本政府施加壓力。最後，國籍法對於日本國籍的繼承採用了性別平等的原則。另一個例子是從公民政治權利國際公約的任擇議定書(*Optional Protocol*)中的個人申訴(individual communication)而來---荷蘭的失業給付法相對於未婚女性及男性，歧視已婚女性。根據此法，已婚女性必須證明她不是家中負擔家計者才能得到全額失業給付，但未婚女性及男性卻不須提出這樣的證明就可獲得全額給付。人權事務委員會主張此法構成對 ICCPR 的侵犯，即便委員會的觀點只是建議性質，荷蘭政府仍修正了這個法律。事實上，如果相關的

人們與政府已準備好要接受，建議仍能產生同樣的結果。

第二個反駁批評的論點，是司法救濟不能永遠提供有效的救濟對抗任何人權侵害。在這樣的世界，人權標準普世適用的概念有時會面臨困境，特別是當這些標準與經濟社會權利保障有關時。舉例來說，在第二次世界大戰之後，日本面臨了嚴重的糧食短缺，有位檢察官僅吃國家分配的糧食而餓死。家屬控告政府未遵守憲法中保障所有日本人民最低生活水準的規定。政府反駁說，在這樣嚴峻的狀況之下，國家不可能提供更多米給所有的日本人，也沒有足夠的外匯從國外進口稻米。日本最高法院判決政府勝訴。事實上，非訟爭議解決機制（alternative dispute resolution or ADR）可能比司法救濟更能發揮功能，再考量到世界上所存在的價值判斷的多元性，具彈性的法律觀念解釋與適用有時更符合需要。人權事務委員會不斷地提倡與人權紀錄不佳的政府對話的重要性，並希望未來狀況能夠改善。在此意義上，審議程序可稱為「建設性的對話」(constructive dialogue)，目標在於國家法律體系可逐步且自願地落實國際人權法標準。

伍、一些補充說明 (Some Additional Remarks)

數年前當我還是人權事務委員會委員時，我在日內瓦開委員會會議，我的一位臺灣朋友來找我。我介紹他給委員會中的其他同事，他向每位同事詢問「臺灣能不能加入公民政治權利國際公約？」他們的意見很一致：「這不是個法律上的問題，而是政治上的！」公民政治權利國際公約第 48 條第一段：「本公約聽由聯合國會員國或其專門機關會員國、國際法院規約當事國及經聯合國大會邀請為本公約締約國之任何其他國家簽署。」既然臺灣並非聯合國會員國或任何其專門機關或國際法院規約當事國，則唯一的可能性就是由聯合國大會邀請參加公民政治權利國際公約了。然而，考慮到中華人民共和國現在的立場，聯合國大會很不可能會發出擴大這樣的邀請。因此，我的同事們對他所說的，是沒錯的。

儘管如此，香港與澳門兩者皆屬於公民政治權利公約的適用範圍，因為英國及葡萄牙各自在歸還這兩地主權給中國時，成功地說服中國讓繼續以香港特別行政區及澳門特別行政區之名繼續適用 ICCPR。這也意味了中華人民共和國已經允許過其部份領土上 ICCPR 的繼續適用。雖然香港與澳門的狀況與臺灣完全不同，臺灣仍可從中看到成為 ICCPR 成員的不同方式的可能性。當然，以我的觀點，臺灣人似乎已經享有公約中大多數的人權保障，民主在臺灣也運作地很好。臺灣人民應該要為這樣的事實感到驕傲，也應該向中國大陸展現這美麗寶島上人權狀況的現實。

The Purpose and Procedure of Consideration of States Parties' Reports by the Human Rights Committee under the International Covenant on Civil and Political Rights; through My Twenty-Year Experience as a Committee Member

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I. Introduction

Article 40, paragraph 1, of the International Covenant on Civil and Political Rights provides that: "The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights…"; Paragraph 2 that: "All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the [Human Rights] Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant"; Paragraph 4 that: The Committee shall study the reports submitted by States Parties…. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties"; and Paragraph 5 that "The States Parties…may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article."

Thus, the framework of "consideration" of States Parties' reports by the Human Rights Committee (HRC) is established: First, States Parties submit reports about their domestic implementation of the Covenant; Second, HRC considers and studies the reports; Third, the Committee transmits its own reports with general comments back to the States Parties; and forth, the States Parties, on their part, submit to the Committee their observations on the Committee's comments. This short article attempts to clarify the purpose and procedure of the "consideration" on the basis of the author's twenty-year experience as a member of the Committee in the following order: (1) the purpose of the consideration in general; (2) detailed examination of the process as well as problems of the consideration; and (3) the effect and evaluation of the consideration as compared with other means of international monitoring.

II. Purpose of the Consideration

The framework of the consideration, as described above, indicates that the consideration as a whole may be regarded as a system of monitoring domestic implementation of international human rights standards. Needless to say, due to the lack of world government and legislature as well as world judiciary, the current protection of human rights depends on domestic systems of each sovereign state. However, if we leave the protection only in the hand of domestic system, then we cannot avoid cases of human rights abuse by domestic authority such as Nazi persecution of Jewish people or the apartheid policy in South Africa. In order to avoid those abuses, we need to establish an international system of human rights protection, whose essence is (1) clarification of universal standards of human rights, and because the implementation of the standards depends on a domestic system, (2) international monitoring of domestic implementation of the standards.

After the end of World War II, the United Nations (UN) was established not only to maintain international peace and security but also to promote international cooperation in economic and social matters, including the protection of human rights. In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights, which set forth universal standards of human rights, and in 1966 the Assembly adopted two international covenants for the protection of human rights; the International Covenant on Economic, Social and Cultural Rights (ICESCR)、 and the International Covenant on Civil and Political Rights (ICCPR). Both the Covenants elaborated the provisions of the Declaration to further clarify in detail universally applicable standards of human rights. In addition, both the Covenants adopted an international system of monitoring the implementation by each State Party of their provisions through consideration of its report. Thus, the purpose of "consideration" is clear: It is to examine or monitor domestic implementation of international human rights standards.

III. Procedure of Consideration

1. Preparation and Submission of a State Report

As described above, the ICCPR provides that a State Party submits its report to HRC for its consideration by the Committee. As to ICESCR, it provides that a State Party's report is to be considered by the Economic and Social Council (ECOSOC) of the United Nations. However, while members of the HRC are elected in their "personal" capacity, members of ECOSOC are representatives of U. N. members

states and it is not necessarily proper for representatives of members states to examine a report of his or her own state or other states. Therefore, in 1987, ECOSOC decided to set up the Committee on Economic, Social and Cultural Rights (CESCR) whose members are thereafter to be elected in their "personal" capacity, as in the case of the HRC.

In any event, a state party to ICCPR must submit its initial report within one year of the entry into force of the Covenant for it and, thereafter whenever HRC requests. The latter category of reports are called "periodic reports" and ordinarily HRC requests their submission every five years or so. There is a third category of reports called "special reports" which HRC requests on specific occasions such as political coup or natural disaster. Any category of a state report is prepared and submitted by the state party itself. Many states prepare the report with the cooperation of various departments concerned such as departments of foreign affairs, law, industry, finance, labour, education and police, though often department of foreign affairs or law takes the initiative. Some states allow NGOs to participate in preparing the report but the submission of the report falls within the responsibility of the government. Naturally, governments rarely submit a report critical of its human rights policy or activities, and in this connection, reports of NGOs can play an important role for HRC to make an objective analysis of actual human rights situation in the state concerned.

As for the length of a report, some are very short in less than 10 pages, enumerating merely provisions of relevant domestic laws without explaining their concrete application to reality on the ground. A few are very long over 500 pages with too detailed information and voluminous statistics. In average, the length of a report is approximately fifty page A4 sheets in single space typing.

As to the content of a report, HRC has adopted general guidelines for a state party in preparing its report. Briefly speaking, the report should be divided into two parts; the first dealing with the general legal framework for the protection of human rights, the second clarifying the protection of specific categories of human rights as stipulated in Part III of ICCPR (from Article 6 on the right to life to Article 27 on the minority rights).

2: HRC and its annual Sessions

HRC is composed of 18 members elected by the plenary meeting of states parties to ICCPR. The election takes place every two years in September before the annual meeting of the General Assembly, in which half of the total members are elected. The candidates are nominated by states parties, but they are elected in their personal capacity and act independently from any state party. Their terms of office is 4 years

but they can be reelected. Because the same members serve for two years together, the Bureau consists of Chair, 3 Vice Chairs and Rapporteur, each representing 5 electoral regions in the United Nations: Africa, Asia, Latin America, Eastern Europe and the West. There is no strict geographical distribution of membership of the Committee, but in 1987 when I joined HRC, 3 each are from Africa, Asia, Latin America and Eastern Europe and the rest are from the West. As far as their background is concerned, majority are academics, one fourth domestic law practitioners, and the rest retired civil servants and politicians.

HRC meets three sessions a year and each session lasts for three weeks; spring session from mid-March to early April at the UN Headquarter in New York, summer session from mid-July to early August and autumnal session from mid-October to early November both in the UN Office in Geneva. Usually HRC has two meetings a day from 10:00 to 13:00 and from 15:00 to 18:00. Thus, it has ten meetings each week, thirty meetings a session, which makes ninety meetings a year. Work of HRC is supported by a Secretariat composed of a team of officials of the UN Office of High Commissioner for Human Rights.

3: Consideration of Reports

(A): List of Issues and Concluding Observations

ICCPR came into force in 1976 and HRC started working in 1977. It first adopted Rules of Procedure by which the delegation of the state party whose report is considered by the Committee is required to attend the meeting. The delegation is to make oral presentation of the report, the Committee members are to ask oral questions, and the delegation may reply orally. This procedure was likely to cause the same or similar questioning, and in order to avoid such repetitions HRC decided to adopt List of Issues, a written summary of questions to be asked to the delegation, and this proved to be very efficient for smooth functioning of the consideration procedure. In this connection, a member of the Committee is assigned as a country-rapporteur for a particular state party, and his or her function is to prepare with the help of the Secretariat a draft list of issues concerning that state party which is to be approved by the plenary. Later, HRC came to limit the number of written questions to 20 to 30, and in recent years the Committee has started sending written list of issues to the state party concerned one session ahead of the session in which its report is to be taken up. In response, some of the states parties concerned send written replies to the list of issues, thus accelerating the consideration of reports further.

In the early days of HRC it was customary that each member was granted time to make oral comments about the exchange of views with the delegation. Here again,

the comments of members were often repetitious or sometimes contradictory, thus causing confusion to the delegation as to HRC's appraisal of the state party's report. Consequently, HRC has come to adopt written Concluding Observations of the Committee as a whole which correspond in substance to "general comments" as stipulated in Article 40, paragraph 4. Nowadays, the Concluding Observations consist of three sections: The first section is an objective description of how the consideration procedure has proceeded; the second section emphasizes merits or improvement of human rights situation of the reporting state party; and the third section specifies demerits or problems concerning human rights situation of the state party and make recommendations to correct the situation. The third section expects the state party to accept the recommendation and indicate improvement of the situation in the next report of the state party. Furthermore, of the 20 or so recommendations, HRC chooses a few that require the state party's response within a short period of time because the next report would be too late to correct the problem such as the lifting of curfew or release of political prisoners. This last procedure is named "Follow-Up to the Concluding Observations", and the response of the relevant states parties, probably in line with the provision of Article 40, paragraph 5, has been pretty encouraging.

IV. Effect or Evaluation of Consideration Procedure

As explained above, HRC has been endeavouring to develop its consideration procedure to the maximum extent possible. However, it must not be forgotten that the work of the Committee is essentially of recommendatory nature and that even Follow-Up to the Concluding Observations is not a legally binding procedure. For that reason, sometimes any activity of HRC is criticized as legally irrelevant or meaningless. In contrast, the European Convention on Human Rights, with many additional Protocols, provides for judicial remedy to the victims of a human rights violation which is legally binding. So does the American Convention on Human Rights as well as the African Charter on Human and Peoples' Rights.

Perhaps, against such criticism, there are two arguments to be made. The first is that some of the acts of recommendatory nature may lead to actual improvement of the situation. For example, during the consideration of the initial Japanese report some Committee members pointed that the Nationality Law of Japan then in force was in violation of the principle of sexual equality enshrined in Article 3 of ICCPR. The Japanese government took it seriously and consulted the Board of Legal Experts, but while the board was discussing the issue, the UN General Assembly adopted the

Convention on the Elimination of All Form of Discrimination against Women and many Japanese Women NGOs put pressure on the Japanese government. Consequently, the Nationality Law was amended to provide for the sexual equality on succession of Japanese nationality. Another example is from an individual communication under the Optional Protocol to ICCPR, where a Dutch Law on Unemployment Benefits provided for discrimination to married women as compared with unmarried women as well as with men. According to the Law, married women had to prove that she was not a breadwinner for the family in order to obtain full unemployment benefits, whereas unmarried women and men could obtain full benefits without such a proof. HRC adopted a view that the law constituted a violation of ICCPR, and the Dutch government amended the law although HRC's view was of recommendatory nature. As a matter of fact, a recommendation may produce the same result, if the people and the government concerned are prepared to accept it.

The second argument against the criticism is that judicial remedy may not always provide for an effective remedy against a violation of any human rights. In the world as it is, the concept of universally applicable human rights standards sometimes encounters a difficult situation, in particular when the standard relates to the protection of economic and social rights. For example, in Japan immediately after the Second World War, there was a severe shortage of food, where a prosecutor eating only officially distributed amount of rice died. The family sued the government as not observing the Constitutional provision to guarantee the minimum standard of living to all Japanese. The government countered that, in the prevailing situation, it was impossible to officially provide more rice to all Japanese due to general shortage of food and that there was not sufficient foreign exchange to import rice from abroad. The Supreme Court of Japan decided for the government. In fact, there are cases where alternative dispute resolution (ADR) system may function better than the judicial remedy, and considering that a diversity of value judgments exists in the world, flexible interpretation and application of legal norms is sometimes desirable. HRC has been advocating the importance of continuing dialogue with states with the record of poor human rights performance in the hope that the situation will improve in the future. In this sense, the procedure of consideration can be described as "constructive dialogue" aiming at gradual and voluntary realization of international human rights standards in domestic legal system.

V. Some Additional Remarks

Several years ago when I was still a member of HRC, a Taiwanese friend of mine came to see me in Geneva where I was attending the Committee meeting. I introduced him to my colleagues of the Committee and he asked each one of them if Taiwan could join ICCPR. Their reply was unanimous: "It is not a legal but a political question!" Article 48, paragraph 1, of ICCPR provides that: "The present Covenant is open to for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant." Since Taiwan is not a member of UN nor any of its specialized agencies nor a party to the Statute of the International Court of Justice, the only possibility is to be invited by the UN General Assembly to become a party to ICCPR. However, considering the current position of the People's Republic of China, it is highly unlikely that the General Assembly will extend such an invitation. Therefore, my colleagues are right in what they said to him.

Nevertheless, in both Hong Kong and Macao ICCPR is applied because the United Kingdom and Portugal, when they returned their sovereignty over the respective territory to China, successfully persuaded China to continue to apply ICCPR to the two regions in the name of Special Administrative Region of Hong Kong and that of Macao. This implies that the People's Republic of China has allowed the continuous application of ICCPR in parts of its territory. While the situation of Hong Kong and Macao is completely different from that of Taiwan, Taiwan may look into a possibility that it may become a party to ICCPR in one way or another. Of course, in my view, the human rights situation of Taiwan is equivalent or even better when compared with the actual situation of some states parties to ICCPR. As far as I can see, the Taiwanese seem to be enjoying most of the human rights enshrined in the Covenant, and democracy is certainly working well in Taiwan. The Taiwanese people should be proud of this fact and should show to the people of the mainland China the reality of human rights situation on this beautiful island.