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held at the Palais des Nations, Geneva,
on Monday, 15 August 1977, at 3.20 p.m.

Chairman: Mr. KOULISHEV

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ADOPTION OF FURTHER RULES OF PROCEDURE OF THE COMMITTEE IN ACCORDANCE WITH ARTICLE 39 OF THE COVENANT (CCPR/C/WG.1/CRP.1) (agenda item 2) (continued)

Rule 93, paragraph 2 (continued)

1. Sir Vincent EVANS, recalling that at the previous meeting Mr. Movchan had proposed that the rule should state that the request for information did not mean that the communication or any part of it had been declared inadmissible, suggested that such a statement was unnecessary. It went without saying that a request for information did not mean that a communication had been declared admissible, because the provisions of rule 93 were concerned with procedures to be complied with prior to any decision by the Committee on the question of admissibility. It seemed to him that paragraph 2 of rule 93, as originally presented by the Working Group, had had a slightly different purpose, namely, to make it perfectly clear to the recipient of the Committee's request for information - whether the recipient was the State party concerned or the author of the communication - that the Committee had not yet reached the stage at which it could take a decision on the question of the admissibility of the communication, and that it was simply seeking additional information to assist it in coming to that decision. It seemed to him, therefore, that the purpose of paragraph 2 should be to ensure that the Secretary-General, when transmitting requests for additional information, made it clear that a decision on admissibility had not yet been reached. If members could agree that that was the purpose of paragraph 2, it might be amended to read: "When information or observations are requested under paragraph 1 of this rule, the Secretary-General, in transmitting the request, shall state that the fact of the request does not mean that the communication has been declared admissible".

2. Mr. LALLAH said that the purpose of paragraph 2, according to the Working Group, was to ensure that each request for additional information was accompanied by a statement to the effect that the request did not imply that any decision had been reached on the question of admissibility. It seemed to him that that purpose would be achieved if the proposal made by Sir Vincent Evans at the previous meeting were adopted. Under that proposal, paragraph 2 would read: "When such information or observations are requested under paragraph 1 of this rule it shall be stated that the fact of the request does not imply a decision on the question of the admissibility of the communication."

3. Referring to the doubts expressed by Mr. Hanga at the previous meeting concerning the French text of paragraph 2, he said that so far as he could judge the French text was satisfactory.

4. Mr. MOVCHAN said that he was perfectly satisfied with the wording proposed by the Working Group for paragraph 2. The slight amendments he had proposed at the previous meeting had been designed to remove the difficulties certain members appeared to have experienced with the French text.

5. Mr. TOMUSCHAT agreed with Sir Vincent Evans that there was no need to specify that a request for additional information did not mean that the communication had been declared admissible.

6. It did not seem to him that Mr. Hanga's objections to the French text were valid.

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7. Mr. HANGA said it was necessary in the French text to specify who would make the statement that the fact of the request did not constitute a determination of the admissibility of the communication. Would that statement be made by the Secretary-General or by the Committee?

8. Mr. TARNOPOLSKY suggested that the original wording of paragraph 2 was completely satisfactory. Nevertheless, in order to overcome some of the objections raised with regard to that paragraph, he suggested that it should be amended to read: "A request under paragraph 1 shall include a statement of the fact that such request does not imply that any decision has been reached on the question of admissibility". That would make it clear that the statement came from the Committee, that it was transmitted by the Secretary-General at the request of the Committee, and that no decision on the question of admissibility had been taken.

9. The CHAIRMAN suggested that the wording for paragraph 2 proposed by Mr. Tarnopolsky should be adopted.

It was so agreed.

Rule 94, paragraph 1

10. Mr. TARNOPOLSKY asked why the words "or any part of it" had been included in the rule.

11. Mr. OPSAHL said that very often an alleged victim complained about various matters in his communication. Some of those matters might be relevant to the provisions of the Covenant but others might not. In such cases, the Committee would have no alternative but to declare part of the communication inadmissible.

12. Sir Vincent EVANS wondered whether that point should not be made explicit by means of a separate sentence, reading: "The Committee may decide a communication to be admissible in whole or in part". That sentence, combined with the existing paragraph 1 of rule 94, would constitute one Provision of rule 94 and existing paragraphs 2 and 3 a separate Provision.

13. Mr. LALLAH said that the sole purpose of paragraph 1 of rule 94 was to offer the State party concerned an opportunity to furnish information before any decision whatever was taken on a communication. Personally, he felt that the wording proposed by the Working Group was satisfactory, but if it gave rise to difficulties the words "or any part of it" could be omitted, on the assumption that the notion that a communication could be partly admissible and partly inadmissible was inherent in the rule. He could not envisage a situation in which, because one-tenth of a communication was inadmissible, the communication as a whole would be declared inadmissible.

14. Mr. TARNOPOLSKY said that, having heard the explanations given by Mr. Opsahl and Mr. Lallah, he was convinced that the words "or any part of it" should be retained. Sir Vincent Evans's suggestion that the point should be made explicit was also valid. If the Committee had no objection to altering a text it had already adopted, that point could be met by inserting the words "or any part of it" after the word "communication" in rule 88.

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15. Mr. MOVCHAN, observing that there was no reference in the Optional Protocol to "any part" of a communication, drew attention to the complicated legal problems that would arise in attempting to decide whether a communication could be partly admissible and partly inadmissible. He suggested, therefore, that the Committee should adopt Mr. Lallah's suggestion and delete the words "or any part of it".

16. Mr. GRAEFRATH noted that the communication could consist of the whole of a complaint or of only part of a complaint, but in any case all that the Committee could deal with and declare admissible was the communication itself. He suggested, therefore, that the words "or any part of it" could be omitted.

17. Mr. OPSAHL agreed that it might not be necessary to spell out the fact that some parts of the complaint might be admissible and others not. Provided it was clear to the Committee that it might have to deal with only parts of a complaint he would have no objection to deletion of the words "or any part of it".

18. Mr. TOMUSCHAT considered that the words "or any part of it" should be retained in rule 94 or inserted in rule 88. The Committee should examine the purpose of its decision in relation to the admissibility of a communication. In his opinion, that purpose was to delimit the field that had to be explored by the Committee. If it was the Committee's understanding that even if the words "or any part of it" were deleted, the Committee's decision on admissibility would have the effect of delimiting the field of investigation, he would be prepared to accept the deletion even though he felt that those words provided a useful guideline for the Committee on the question of admissibility.

19. Mr. PRADO VALLEJO said that it was, in his opinion, quite possible that some parts of a communication might be incompatible with the provisions of the Protocol and the Covenant.

20. Secondly, he suggested that the notion of giving a State an opportunity to furnish information should be replaced by the notion of bringing the communication to the attention of the State concerned - which implied that the State would have an opportunity to furnish information. However, as use of the word "oportunidad" in the Spanish text would make it possible for the State to argue that it had not been given an opportunity to furnish information or observations, he suggested that paragraph 1 should be amended to read: "No communication or any part of it may be declared admissible unless the text of the communication has first been brought to the attention of the State party concerned".

21. Lastly, he suggested that it might be necessary to specify in the rule that if a State which had been given an opportunity to furnish information failed to do so the Committee would continue its work under the provisions of the Protocol.

22. Sir Vincent EVANS said that any letter might be considered as comprising a series of communications, and therefore agreed with Mr. Lallah's suggestion to delete the words"or any part of it". The Committee's use of the term communication would then be consistent with the Protocol.

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23. He suggested that the point made by Mr. Prado Vallejo might be met if paragraph 1 was amended to read: "No communication may be declared admissible unless the State party concerned has been requested to provide information or observations as provided in rule 93."

24. Mr. OPSAHL, noting that the Working Group had realized that a letter might contain a number of claims, felt that the term "communication" should be used throughout. The rule should not give the impression that a request for information was enough before a decision was taken, as that might call the Committee's good faith in question. It must wait until the time-limit expired and hold consultations.

25. Mr. HANGA agreed that the term "communication" should have one meaning only so that, if the Committee considered it applied to individual claims in a communication, the words "or any part of it" should be deleted.

26. Mr. MOVCHAN questioned the need for paragraph 1, which referred to the State party but not to the individual, whereas rule 93 referred to both parties. In his view, therefore, rule 94 should refer to both parties or paragraph 1 should be deleted.

27. Referring to the queries raised about procedures if the State party delayed its reply or failed to reply, he pointed out that rule 93 established a time-limit after which the Committee was free to decide how it should proceed.

28. Mr. LALLAH noted that, although the rules of procedure were primarily for the use of the Committee, they would also provide individuals with guidance on the procedure that they should follow. Rule 94 simply indicated the steps taken by the Committee when it declared a communication to be admissible, when it declared it inadmissible, and how it proceeded subsequently.

29. Mr. ESPERSEN noted that one of the grounds for admissibility was that local remedies had been exhausted. Unfortunately, the Committee might find it difficult to establish that they had indeed been exhausted without giving the State party an opportunity to give its opinion on the issue. He was therefore in favour of retaining paragraph 1 as amended at the meeting.

30. Mr. PRADO VALLEJO agreed that paragraph 1 could be deleted, but for reasons other than those adduced by Mr. Movchan. Specifically, it might give the false impression that preference was being given to the State party as it failed to mention respect for the individual. Moreover, it imposed a new condition for admissibility which was not in the Protocol and added nothing of value to the rules of procedure in general.

31. Mr. OPSAHL said he was afraid that the provision had not been properly understood. Its deletion might create a situation in which the Committee would not grant States parties their right to furnish information. The other party, namely, the individual, had already been heard in the communication, and that was why the rule could not apply to both sides but only provide an elementary safeguard for the State party.

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32. Mr. MOVCHAN emphasized that, as a logical sequel to the previous rule, paragraph 1 of rule 94 should state that no communication could be declared admissible unless both the State party and the individual had been asked to furnish information; failing that, paragraph 1 would imply that the individual was of no account. Perhaps paragraph 1 of rule 94 should be transferred to rule 93, which mentioned both the State and the individual.

33. Mr. GRAEFRATH noted that rule 94 dealt with two distinct issues, in that paragraphs 2 and 3 were concerned with inadmissibility whereas paragraph 1 attempted to ensure that the Committee did not declare a communication admissible unless the State party had been given an opportunity of stating its views. If some Members found it difficult to accept the text as worded, the beginning of paragraph 1, rule 93 might be amended to read "Before declaring a communication admissible, the Committee shall, through the Secretary-General, transmit the text of the communication to the State party concerned and request the State party concerned to submit written information or observations as may be relevant to the question of admissibility ...". That wording would reflect the principle contained in the present rule 94, paragraph 1, which could then be deleted. Rule 94 would then deal only with inadmissibility, and rule 95 would be devoted to procedures after the question of admissibility had been decided.

34. Mr. MORA ROJAS pointed out that the text of rule 93 as adopted offered the Committee an option, whereas rule 94 was mandatory. That apparent inconsistency had arisen because the Protocol laid down various stages, which were clearly defined in articles 3, 4 and 5, and therefore the Secretariat, and then the Working Group, had considered it appropriate that the rules of procedure should follow the same stages. However, the Protocol laid down only one procedure for consultation on admissibility whereas the Committee had established two procedures, the first in rule 93 - which was converted in paragraph 1 of rule 94 into an obligation - and the second stemming from article 4 of the Protocol. It would therefore be illogical to delete paragraph 1 of rule 94 which offered the Committee the only opportunity of consulting a State party to determine whether domestic remedies had been exhausted or whether the matter was already being examined under another procedure of international investigation.

35. Mr. ESPERSEN reiterated that both the State and the individual concerned should be mentioned. The individual was obviously already aware of the communication whereas the State was not; paragraph 1 of rule 94 was therefore essential. Perhaps all reference to information and observations should be incorporated in rule 93.

36. Mr. OPSAHL emphasized that the rule covered three distinct situations, namely, where the communication was clearly inadmissible, where it was clearly admissible, and where there was some doubt; it should not be interpreted as placing the individual at a disadvantage.

37. Mr. LALLAH explained that, contrary to the opinion expressed by some previous speakers, the rule gave preference not to the State but rather to the individual, as he could submit claims and was therefore at an advantage. The State was in the position of the accused, and therefore had the right to answer the accusation. Furthermore, if the Committee decided that a communication was admissible, preference was being shown for the individual. Rule 93 had originally contained the provision that "Information and observations ... shall be transmitted to the other party", but unfortunately that had been deleted and information from the State would not necessarily be transmitted to the individual, although he hoped that the Committee's practice would be to do so.

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38. Mr. TOMUSCHAT said that, contrary to the view expressed by a previous speaker, rule 94 would give States the same procedural rights as individuals. Some States might hesitate to ratify the Optional Protocol if the Committee took its decisions rather lightly, especially if there was any doubts concerning the admissibility of communications. Paragraph 1 of rule 94 should therefore be retained, although it might be placed elsewhere.

39. He could not accept Mr. Graefrath's proposal which implied that the Committee was requesting information because it was going to declare a communication admissible. It was necessary to ensure that no decision on admissibility could be taken before all information had been received, and the only way of doing so was through the wording of paragraph 1.

40. Mr. HANGA also favoured the retention of paragraph 1 because it provided the State party with an opportunity to safeguard its interests similar to that already given to the individual, thus placing them on an equal footing, in accordance with the maxim audiatur et altera pars. Juridical grounds for its retention could also be found in articles 4, paragraph 1 and 5, paragraph 4 of the Protocol. It did not seem to him to be important whether the paragraph was incorporated in new rule 92 or remained in its present position.

41. Mr. MOVCHAN said that he was prepared to accept the paragraph in the interest of achieving a consensus, but he continued to have doubts about the efficacy of the provisions for informing States parties. If the view was taken that the Committee could not declare a communication admissible without informing the State party, paragraph 1, as drafted, would not suffice to establish that requirement since new rule 92, to which the paragraph referred, merely stated that the Committee or a Working Group might establish contact with the State party. Paragraph 1 would therefore apply only to those cases in which it was decided to take that course. The rights of the author of the communication, on the other hand, were protected by the very fact that the Committee was prepared to consider the admissibility of his communication. Unless, therefore, new paragraph 92 was modified to impose an obligation to establish contact with the State party, it was his view that the Committee might, under paragraph 1, take a decision on admissibility without informing the State party. He believed that it should be clearly stated in the rules that the Committee would not proceed to decide the question of admissibility unless the State party had been informed or given an opportunity to provide additional information.

42. As far as the position of the paragraph was concerned, he was willing to accept its incorporation in new rule 92, but thought that its import might be brought out more clearly if it was set out as a separate rule.

43. Mr. TARNOPOLSKY said that it would be contrary to the spirit of the Covenant if the Committee were to decide on either admissibility or substance without hearing both parties. The reason why the Committee had decided not to provide for compulsory communication with States parties in all cases was to avoid imposing on them the onerous task of commenting on numerous communications that were patently inadmissible. If, however, the paragraph under discussion were not adopted, the possibility would be open for the Committee to decide that the communication was admissible without hearing the State party. Inclusion of the paragraph was, therefore, absolutely essential.

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44. As to the position of the paragraph, it might well be incorporated in new paragraph 92, when it would complement the earlier part of the paragraph, which referred to the circumstances in which the Committee might approach an individual. In that case, it would be clear that the State must be communicated with before a decision on admissibility was reached. The same objective would, however, be achieved by including the paragraph as a separate rule.

45. Unless States were convinced that the rules adequately protected their interests, it would be difficult to persuade a much larger number than at present to ratify the Protocol.

46. Mr. GRAEFRATH thought that his views had been misunderstood. He had not proposed that because the Committee intended to declare a communication admissible it would have to give the State party an opportunity to furnish information; what he had proposed was that no communication should be declared admissible unless the State party concerned had been given an opportunity to furnish information. It had been his view that the effect of the paragraph was not clear in its present position in rule 94, but he had no strong preference between incorporating it in new rule 92 or making it a separate rule.

47. Sir Vincent EVANS recalled that he had already expressed the view that present paragraph 1 of rule 94 did not belong with paragraphs 2 and 3 of that rule. He was not opposed to making the paragraph a separate rule, but he preferred Mr. Espersen's suggestion that it should be paragraph 2 of new rule 92. The confusion that had been apparent during the discussion would then be removed, and it would be clear that the paragraph should be read as what was virtually a proviso or an exception to paragraph 1 of new rule 92; for the effect of the first paragraph was that a request might be made, while that of the second would be that the State party must be invited to furnish additional information or observations before the Committee found the communication admissible.

48. Mr. OPSAHAL said that he could accept either that place for the incorporation of the paragraph or its inclusion as a separate rule.

49. When the original rule 93 had first been drafted, explicit provision had been made for the text of the communication to be transmitted in all cases, whereas with the amendments which had now been accepted, it was theoretically possible that information might be requested on such points as the date of a judgment or the nationality of the author of the communication, without the text of the communication itself being transmitted to the State party. One way of remedying that defect would be to insert the words "on it" after the words "furnish information or observations" in the paragraph under discussion.

50. It was agreed that the paragraph which appeared in document CCPR/C/WG.1/CRP.1 as paragraph 1 of rule 94 should become paragraph 2 of renumbered rule 92, and that the original paragraph 2 of that rule should be renumbered paragraph 3.

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51. The CHAIRMAN said that the full text of rule 92 now read as follows:

"1. The Committee or a Working Group established under rule 88 may, through the Secretary-General, request the State party concerned or the author of the communication to submit additional written information or observations relevant to the question of admissibility of the communication. The Committee or the Working Group shall indicate a time-limit for the submission of such information or observations with a view to avoiding undue delay.

"2. No communication may be declared admissible unless the State party concerned has been given an opportunity to furnish information or observations as provided in paragraph 1 of this rule.

"3. A request under paragraph 1 of this rule shall include a statement of the fact that such request does not imply that any decision has been reached on the question of admissibility."

52. Mr. URIBE VARGAS, supported by Mr. PRADO VALLEJO, said that the Spanish word "oportunidad" used to translate "opportunity" in paragraph 2 carried connotations that did not seem to be intended by the Committee; some other word such as "ocasión" or "possibilidad" might be more appropriate.

53. Mr. GRAEFRATH said that "opportunity" did seem the appropriate word to use in the English text.

54. The CHAIRMAN suggested that that drafting point in the Spanish text should be decided by the Spanish-speaking members.

55. It was so decided.

56. Mr. TOMUSCHAT proposed that the phrase "se rapportant" should be substituted for "peuvent se rapporter" in paragraph 1 of the French text.

57. It was so decided.

58. Rule 92 as read out by the Chairman was adopted.

Rule 94, paragraphs 2 and 3

59. The CHAIRMAN observed that the remaining two paragraphs of rule 94 as it appeared in the Working Group's draft (CCPR/C/WG/1/CRP.1) should now be renumbered 1 and 2. He called for comments on them.

60. Mr. LALLAH hoped that it might be possible to adopt the paragraphs as they stood.

61. Mr. MOVCHAN, concurring, expressed the same hope with regard to rule 95, but noted that it would be necessary to insert the words "through the Secretary-General" at the appropriate places to bring the text into line with previous rules.

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62. Mr. TOMUSCHAT pointed out that paragraph 2 of rule 94 provided for a review of decisions on admissibility with reference only to article 5, paragraph 2 of the Protocol. There might, however, be other circumstances in which review was necessary as, for example, when a person claimed that he had not been properly represented at the time the decision on the inadmissibility of his communication had been taken. He would be prepared to accept the paragraph as it stood provided that it was understood that such grounds for review were not excluded.

63. Sir Vincent EVANS proposed that the words "the written request of the author" in paragraph 2 should be replaced by "a written request by or on behalf of the individual concerned" in order to cover the contingency of the original author no longer being alive or not being in a position to renew his request. He further proposed that the words "that the matter is no longer pending before other international organs or that available domestic remedies have been exhausted" should be replaced by "that the conditions for admissibility referred to in [original] paragraph 1 (e) or (f) of rule 92 no longer apply", so as to leave open the possibility of review in cases where the person whose communication had originally been declared inadmissible because domestic remedies had not been exhausted was, after the passage of time, able to argue that his State was unduly prolonging proceedings.

64. Mr. ESPERSEN thought that those proposals would improve the text but, that they did not meet the difficulty mentioned by Mr. Tomuschat. It was not clear to him why the rule was necessary, since the cases it seemed to be designed to cover came under the general principle of law that, when a new situation arose, a decision previously taken must be open to review.

65. Mr. LALLAH conceded that the points made by Sir Vincent Evans and Mr. Espersen had some force. But the reason why the Secretariat had framed the original rule was to cover two different sets of circumstances: one in which the Committee was prepared to take up a case in spite of the fact that domestic remedies had not been exhausted on the grounds that proceedings were being unreasonably prolonged; the other in which a decision on inadmissibility had already been taken by the Committee and therefore required review. If it were eventually decided to adopt original rule 92, paragraph 2, the concern expressed by the previous speakers should be allayed.

66. Mr. OPSAHAL said that the reason why the obstacles to admissibility mentioned in article 5, paragraph 2 of the Protocol were given special mention was that, being of a temporary nature, their disappearance would make it possible to take up the original communication once again, while other obstacles of a "permanent" nature would require a new communication to be submitted. It might well be, however, that the grounds for review should be broadened, as Mr. Tomuschat had suggested.

67. Sir Vincent EVANS said that he had not been entirely convinced by Mr. Lallah's explanations. It could happen that, at the time an individual complained to the Committee about an alleged violation of the Covenant, the State party concerned would be in a position to persuade the Committee that domestic remedies had not been exhausted, and that consequently the communication should be judged inadmissible.

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But, if some three years later proceedings were still continuing in the courts of the State concerned and the individual wished to invoke the last sentence of article 5, paragraph 2 of the Protocol concerning undue prolongation, paragraph 2 of rule 94, as at present drafted, would seem to preclude the Committee from reviewing its decision.

68. Mr. GRAEFRATH, referring to the second amendment proposed by Sir Vincent Evans, suggested that the phrase "the conditions for admissibility" should be replaced by "the reasons for inadmissibility".

The meeting rose at 6.05 p.m.

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