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ON CIVIL AND
POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

Seventh session

SUMMARY RECORD OF THE 169th MEETING

held at the Palais des Nations, Geneva,
on Friday, 10 August 1979, at 10 a.m.

Chairman:

Mr. KOULISHEV

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The meeting was called to order at 10.30 a.m.

ADOPTION OF FURTHER RULES OF PROCEDURE OF THE COMMITTEE IN ACCORDANCE WITH
ARTICLE 39 OF THE COVENANT (continued)

1. Sir Vincent EVANS said that he had prepared a new version of the draft rules relating to chapter XVI in the light of the comments made on them by the Committee at the 151st meeting. The new version consisted largely of excisions.

2. Mr. Sadi had observed that rule 72, paragraph 1, was perhaps drafted in an over-elaborate way and had suggested that it should be simplified. The same consideration applied to paragraph 2, and on his own initiative he (Sir Vincent) had made certain deletions, since it had seemed to him that the paragraph could, with advantage, be shortened. Indeed, with the deletion of subparagraphs (a), (b) and (c), it had been reduced to the essentials.

3. He had made no material changes to rules 73, 74 and 75, but two material changes had been made to rule 76. Firstly, the new subparagraph (a) was a streamlined version of the original, but stated what was necessary. In his opinion, the shortened version avoided some of the possible pitfalls offered by the earlier and more elaborate version. Secondly, he had added a phrase at the end of subparagraph (c) to take account of a comment by Mr. Tomuschat, who had pointed out that the previous version of the draft rules had failed to reflect the last sentence of article 41, paragraph 1 (c), of the Covenant dealing with the exhaustion of domestic remedies. Some observations had been about the use of the double negative, particularly in relation to rule 77A but also in respect of the beginning of rule 76. After a good deal of reflection, he still thought that the opening words of rule 76 were drafted in the best possible way, certainly so far as the English text was concerned. He therefore wished to recommend to the Committee that rule 76 should be left as it stood.

4. The objections to the use of the double negative had been directed much more to rule 77A, and the suggestion made by Mr. Hanga dealt with the problem very neatly and seemed by far the best solution. What was needed was to streamline the procedure as much as possible, having regard to the time-limit of one year imposed by article 41 of the Covenant. It was therefore desirable to avoid having two distinct stages in the procedure, namely, that of determining the inadmissibility of a communication and that of considering a communication on its merits. The communication was by one State in respect of another State, which was not at all the same situation as the consideration of communications under the Optional Protocol. It seemed certain that any question relating to the Committee's competence to consider a communication would be raised by one of the State parties concerned, and unless an objection on the ground of competence was raised by a State party, the Committee would normally proceed directly to deal with the matter on its merits. The new versions of rules 76 and 77A permitted the Committee to proceed in that way.

5. He had deleted the words "with a view to avoiding undue delay" from the second sentence of rule 77B, in accordance with the views of a number of members of the Committee. Apart from changing "by" to "in" in the first paragraph, he had made no material change in rule 77C. Again, in deference to the views expressed by a number of members, he had deleted the words "as soon as possible after its adoption" from rule 77D, paragraph 3. There was no change in rule 77E.

6. The CHAIRMAN thanked Sir Vincent Evans for his excellent work.
7. Mr. MOVCHAN expressed deep gratitude to Sir Vincent Evans for his speedy and efficient work, for taking account of the proposals, wishes and comments made by the members of the Committee during the discussion of the first draft, and for his own independent work aimed at improving the draft rules of procedure. It was to be hoped that the Committee could now adopt those draft rules as they stood.
8. Mr. SADI associated himself with the expressions of gratitude to Sir Vincent Evans.
9. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt chapter XVI relating to the procedure for the consideration of communications received under article 41 of the Covenant.
10. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (continued)

11. The CHAIRMAN said that a list of points for possible consideration by the Committee had been prepared by the Secretariat and would be distributed to members.
12. Mr. van BOVEN (Representative of the Secretary-General) said that the list had been drawn up in response to a request by a member of the Bureau who had suggested that the main points covered in his (Mr. van Boven's) opening statement should be summarized. The following points were listed: (1) how to relate the examination of initial and subsequent reports; the extent to which subsequent reports responded to questions or comments raised during the examination of previous reports; and the question of guidelines for the submission of further information or subsequent reports; (2) how the Committee might deal with de facto situations in addition to de jure situations; (3) finalization of the Committee's views on its examination of States' reports; (4) promptness in the handling of communications by the Committee; (5) covering the activities of the Committee in the United Nations Yearbook on Human Rights; (6) publicity and public information activities regarding the work of the Committee; (7) assistance by the Secretariat; (8) relations with the specialized agencies. Needless to say, the members of the Committee might wish to discuss additional points. He had been closely following the discussions in the Committee and had noted that a number of the points listed had been referred to repeatedly during the current session.
13. Mr. MOVCHAN, speaking on a point of order, said that he did not understand the basis on which the Committee had received the list of points. The provisions of the Covenant which touched upon the obligations and duties of the Secretary-General simply mentioned technical assistance by the Secretary-General. Rule 6 of the provisional rules of procedure stated that the provisional agenda for each regular session should be prepared by the Secretary-General in consultation with the Chairman of the Committee, in conformity with the relevant provisions of the Covenant and of the Optional Protocol to the International Covenant on Civil and Political Rights. It also stated that the provisional agenda might include any item proposed by the Secretary-General relating to his functions under the Covenant. On what legal basis was the representative of the Secretary-General acting when he suggested a list of points? Was he not exceeding his powers under the Covenant, and what was the legal status of the points he had submitted? He would not comment on the substance of the matter in view of the fact that he had put a question of procedure.

14. Mr. van BOVEN (Representative of the Secretary-General) said that the list had been prepared in response to a request made by the Bureau and was of a purely informal nature.
15. Mr. MOVCHAN asked why the Bureau had not informed the Committee that it had requested the Secretariat to provide a list, and why the Committee had suddenly been presented with the list when it was engaged in consideration of organizational matters.
16. Sir Vincent EVANS, speaking on a point of order, said that he himself had asked the Secretariat to prepare the list in question. He had felt that the annotations to the agenda item relating to organizational and other matters had been somewhat vague and that it might be helpful to the Committee to have a list of specific points which might be discussed under that item. Naturally, it was for the Committee to decide which points it wished to take up.
17. Mr. BOUZIRI, speaking on a point of order, proposed that discussion of the list of points just submitted to the Committee should be adjourned and that the Committee should take up the question of future meetings of the Committee, which had been raised by Mr. Sadi.
18. The proposal was adopted.

FUTURE MEETINGS OF THE COMMITTEE

19. Mr. SADI proposed that, in order to avoid any conflict between the ninth session of the Committee, which was scheduled for 10-28 March 1980 in New York, and the thirty-sixth session of the Commission on Human Rights, the Committee should postpone its ninth session until early April 1980. That would enable those members of the Committee who wished to do so to follow the work of the Commission and would perhaps help to ensure that there was a quorum at the Committee's meetings.
20. Mr. van BOVEN (Representative of the Secretary-General) said that the calendar of conferences for 1980 was very full. While it was preferable to avoid any overlap with meetings of the Commission on Human Rights, it should be noted that, if the ninth session of the Committee was postponed until early April, it would conflict with a session of the Economic and Social Council and with a meeting of a working group on the implementation of the International Covenant on Economic, Social and Cultural Rights. The Secretariat would have to ascertain whether the necessary facilities would be available in New York at the time suggested before giving a final answer.
21. Sir Vincent EVANS said that he had already made commitments for the month of April 1980 and that it would be difficult for him to change his plans at the current stage.
22. Mr. DIEYE supported the proposal made by Mr. Sadi. In view of the cardinal importance of the work of the Commission on Human Rights in relation to the work of the Committee, every effort should be made to avoid any overlapping between sessions of the two bodies. It might be better to hold the ninth session of the Committee after the thirty-sixth session of the Commission.

23. Mr. TOMUSCHAT said that he, too, had commitments for April 1980. Nevertheless, the Committee should bear in mind its work on communications received in accordance with the provisions of the Optional Protocol. The Committee had decided to hold its 1980 sessions in March, July and October in order to avoid too long an inter-sessional period and to expedite its work on communications. Although every effort should be made to avoid an overlap between the sessions of the Committee and those of the Commission, it might not always be possible to do so.
24. Mr. MOVCHAN said that, since all members of the Committee had future commitments, it would be helpful if the Secretariat could inform the Committee as soon as possible of the alternative dates on which its sessions could be held during 1980.
25. Mr. van BOVEN (Representative of the Secretary-General) said that he would contact the Secretariat in New York regarding alternative scheduling possibilities. He would welcome confirmation of his understanding that the Committee was requesting postponement of the ninth session solely in order to avoid overlapping with the session of the Commission on Human Rights.
26. Mr. TARNOPOLSKY agreed that the Committee should ask the Secretariat what dates were available. His preference was that the ninth session should be held in April, or alternatively in January and February, i.e. shortly before the Commission's session.
27. He agreed with the views expressed by Mr. Sadi regarding the problem of obtaining a quorum, and added that several members had already missed several meetings.
28. Mr. SADI said that the final decision depended upon the information to be obtained from the Secretariat; he hoped that in future all questions of scheduling would be discussed well in advance in the Committee. The Secretariat, in presenting alternative dates, should keep in mind the need for proper spacing of sessions. As to the question of a quorum, difficulties would arise because several members would be unable to adhere to the schedule as it stood. The fact that the scheduled sessions conflicted with sessions of the Economic and Social Council was not particularly relevant; the real problem was overlapping with the session of the Commission on Human Rights.
29. Mr. LALLAH drew attention to paragraph 611 of the Committee's annual report (A/33/40), which indicated that future meetings had been discussed intensively in the Committee, albeit at a time when Mr. Sadi and Mr. Dieye had not been members. He therefore presumed that the Secretariat had already taken the Committee's wishes into account in scheduling the sessions. Any changes in the scheduling of the tenth and eleventh sessions must take into account the time-limits required for communications.
30. Mr. OPSAHL said that the Committee's time-table had been established with a view, not to meeting individual preferences, but rather to the proper spacing of sessions, in the light of the schedules of other bodies. The Committee members must give priority to the work they did in a personal capacity, as members of the Committee, regardless of their other functions.
31. Mr. TARNOPOLSKY said that it would facilitate the work of the Secretariat and hasten a decision if the Committee could agree that there were no objections to the scheduled dates for the tenth and eleventh sessions.

32. Mr. SADI said that his only difficulties related to the ninth session, which he would like postponed for one week so as to avoid overlapping with the Commission on Human Rights.

33. Sir Vincent TWANS said that a delay of one week in the ninth session would create no difficulties for him, but any changes in the tenth and eleventh sessions would create difficulties because of his prior commitments.

34. Mr. DIEYE said that, although the obligations assumed by members of the Committee in a personal capacity had priority, the ties between certain bodies, particularly the Human Rights Committee and the Commission on Human Rights, were strong and it would be irrational to allow their sessions to overlap by one week. The schedule indicated in paragraph 611 of the Committee's report (A/33/40) was only tentative and the new members of the Committee should have a chance to express their views. He hoped that some compromise solution would be possible.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

35. Mr. ANABTAWI (Secretary of the Committee) said that so far initial reports had been received from 34 States parties, the latest being from Suriname, Iraq, Peru and Senegal. Additional information had been received from seven of those States, the latest being from Hungary. Certain legal texts had also been received from the Tunisian Government in fulfilment of a promise that had been made by its representative during consideration of that country's report at the second session.

36. So far initial reports due in 1977 had not been received from Colombia, Costa Rica, Jamaica, Kenya, Lebanon, Mali, Rwanda, the United Republic of Tanzania and Uruguay. In accordance with the decision taken by the Committee at its sixth session, an aide-mémoire intended for those Governments had been prepared by the Secretariat and transmitted to the Chairman of the Committee.

37. In accordance with rule 69 of the provisional rules of procedure and the decision taken by the Committee at its sixth session, reminders had been sent on 14 May 1979 to Guyana, Panama and Zaire, which had not yet submitted their initial reports due in 1978. Eight reports were due in 1979, including five before the closure of the present session. Peru, whose report was due on 27 July 1979, had submitted its report on 2 July 1979.

38. The additional information promised by the representatives of Denmark and the Libyan Arab Jamahiriya during consideration of their initial reports at the third session had not yet been received. The Committee had authorized the Chairman to try to ascertain from the permanent representatives of those countries when the information could be expected so that he could inform the Committee at the current session.

39. At its sixth session no decision had been taken by the Committee to send reminders to the States parties which had undertaken to submit supplementary information relating to the consideration of reports at the fourth and fifth sessions. However, the Secretary-General, in a note verbale dated 11 May 1979 and addressed to the Ministers for Foreign Affairs of those States, i.e. the Federal Republic of Germany, Jordan, Madagascar, Mauritius, Norway and Yugoslavia, had reminded them of that undertaking and requested them to submit

any such information to the Committee as soon as possible. Copies of the summary records of the relevant meetings and the Committee's annual report to the General Assembly at its thirty-third session, had been appended to the notes verbales. In a note verbale dated 7 June 1979 and addressed to the Secretary-General, the Acting Permanent Representative of the Federal Republic of Germany to the United Nations Office at Geneva had informed the Secretary-General that the competent Federal Ministry of Justice, in view of the necessary co-ordination with the Ministries concerned, would not be in a position to submit the additional information required before the end of 1979.

40. In addition to the initial and supplementary reports scheduled for consideration at the current session, seven initial reports - those of Canada, Iraq, Mongolia, Peru, Poland, Senegal and Suriname - and two supplementary reports - those of Hungary and Sweden - were due for consideration.

41. Mr. DIEYE asked over how many sessions the consideration of outstanding reports could be distributed.

42. Mr. ANABTAWI (Secretary of the Committee) said that was difficult to predict because it depended upon the Committee's workload for a particular session. In any case, eight reports in all were still pending.

43. Mr. OPSAHL said that the Committee must assume that some Governments would react to its reminders and should therefore allow time to deal with their reports.

44. Mr. GRAEFRATH felt that that should be done only when the reports were received.

45. Mr. TOMUSCHAT wished to know how the reminders had been drafted because he felt that very strong wording was necessary in the case of States parties whose reports were long overdue.

46. Mr. ANABTAWI (Secretary of the Committee) read out the aide-mémoire which had been drawn up in pursuance of the decision taken by the Committee at its sixth session. He said that the aide-mémoire referred to the States parties' obligations under article 40 of the Covenant and drew their attention to previous communications from the Committee, including requests, reminders and other correspondence, and the record of compliance of the other States parties to the Covenant. The aide-mémoire then mentioned the mandatory nature of the reporting obligations under States parties under article 40 of the Covenant and concluded by stating that unless the report was received by the date indicated, the Committee would be left with no other alternative but to bring the matter to the attention of the General Assembly, in accordance with rule 69, paragraph 2, of its provisional rules of procedure, in its annual report.

47. The CHAIRMAN thought that an important point in the aide-mémoire was its threat to bring the matter of the failure of a State party to fulfil its obligations under the Covenant to the attention of the General Assembly through the Committee's annual report.

48. Mr. BOUZIRI said that forgetful States parties should certainly be reminded of their obligations under the Covenant, which they had signed and ratified and agreed with Mr. Tomuschat that that should be done in the strongest possible terms. In addition, however, the Committee should consider other possible ways of bringing pressure to bear on recalcitrant States, through publicity or other measures.
49. The CHAIRMAN, speaking as a member of the Committee, considered that the severest measure to which the Committee could resort was a reference in its annual report.
50. Mr. DIEYE agreed with the Chairman. However, it was important for the Committee to decide at what point it should take the measure he had mentioned. In other words, how long should it wait before taking such a measure with regard to a State party which had not submitted a report in accordance with its obligations under article 40 of the Covenant?
51. Mr. OPSAHL suggested that it might be useful for the Committee, in its reminders, to set a new deadline for the submission of overdue reports. That would help the Committee to plan its work more efficiently.
52. Sir Vincent EVANS considered that it was perfectly proper for the Committee to remind States parties of their obligations under the Covenant. However, it should be very wary of setting new deadlines, which might in the end cause it difficulties in its own work. In any case, it had no authority for setting such further deadlines or any means available to it for enforcing them.
53. Mr. OPSAHL said that there need not be any formal action. The question of the date of submission of a delayed report could be taken up informally with the representatives of the State party concerned, so that the Committee could do the work for which it had been established.
54. Mr. TOMUSCHAT said that the Committee should take a series of measures with regard to recalcitrant States. Firstly, it should name those States in the press release relating to the conclusion of its work at the current session. Secondly, it should mention them in its annual report, not merely in an annex but in a section devoted specifically to the subject of States parties which had not fulfilled their obligations under the Covenant. Those two steps might be considered negative steps or measures constituting a sanction. Then thirdly the Committee ought to take a positive or constructive step in order to help such States to carry out their obligations. Thus, at the time of the next reminder to those States it could send a letter explaining the practice of the Committee with regard to States' reports, as it had evolved over the past two years. Through the Secretariat, the Committee could even offer help in the drafting of reports where that appeared necessary.
55. Mr. HANGA considered that, apart from reminding States parties of the obligations they had undertaken on signing the Covenant, the Committee could not apply the same measures to all States parties in default. It must consider them one by one and take the decision that was appropriate in each case.
56. The CHAIRMAN agreed. A case in point was that of Lebanon, from whose Government a letter had just been received explaining the particular difficulties it was encountering in preparing its report.

57. Mr. OPSAHL suggested that for each State party concerned, the Committee might consider appointing a special rapporteur to make personal contact with the Government and to offer it help, through the Secretariat, in the preparation of its report. He felt very strongly that the Committee should change its methods with regard to that part of its work.

58. The CHAIRMAN said that account would be taken of that suggestion, which, of course, had financial implications.

59. Mr. HANGA noted that the Committee had adopted different methods in dealing with the different reports it had examined so far at the present session. Since there was very little time left, it might be useful for the Committee to decide in advance what method to use with regard to the report of the Government of Finland, which remained to be taken up before the end of the session.

60. Mr. MOVCHAN endorsed Mr. Hanga's remarks. It would be very helpful if the Bureau could give the Committee advice on how to proceed in its examination of that report.

61. The CHAIRMAN said that the Bureau would discuss that matter and express its views to the Committee at the beginning of the next meeting.

62. Mr. MOVCHAN drew attention to the fact that the form of the press releases relating to the work of the Committee was not consistent: some went into considerable detail regarding the questions and answers arising from the reports of certain States, while others gave only a very general summary of the entire discussion with a mere list of the names of speakers and no details. Press releases should follow a common pattern in such matters. Otherwise, those responsible for preparing them laid themselves open to a charge of bias and partiality.

63. Mr. BOUZIRI said he entirely agreed: the question of bias in press releases had been raised before. He had hoped for an improvement but, in his opinion, no progress had been made. Since the problem was a serious one, the Committee should discuss it and find an appropriate solution.

64. The CHAIRMAN said that account would be taken of those observations.

The meeting rose at 1.15 p.m.