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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE 49th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 3 December 1996, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.25 a.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

Draft optional protocol (continued) (E/C.12/1996/CRP.2/Add.1 and E/C.12/1994/12)

1. The CHAIRPERSON invited the Committee to pursue its examination of the revised report he had prepared on the question of an optional protocol to the Covenant providing for the consideration of communications (E/C.12/1996/CRP.2/Add.1).

Paragraphs 47-49 (art. 6)

2. Mr. AHMED referring to the proposed text of article 6, paragraph 1 (para. 49), said that he understood the Committee's concern to protect the identity of the author, but wondered how a State could be expected to repair damage without necessarily knowing the victim's identity.

3. Mr. SIMMA said that the clause in question was common to comparable complaints procedures. Mr. Ahmed's point might, however, be relevant in some cases, depending on the attitude which the State concerned was likely to adopt towards the source of the complaint. An alternative would be to state that the author's identity should not be revealed if the circumstances so required.

4. The CHAIRPERSON said that in certain cases the withholding of the individual's name would, indeed, make it impossible for the Committee or the State party to follow up on the allegation, and the author would then have the choice of either agreeing to the disclosure of his or her identity or of not proceeding with the complaint.

5. Mr. AHMED said that it might therefore be preferable to delete the reference from the final text: the Committee could resolve the issue in each case according to its rules of procedure.

6. The CHAIRPERSON said he had taken it that the Committee had agreed that there must always be a valid reason for rejecting any language already accepted as traditional in a particular domain. If the Committee were to follow Mr. Ahmed's suggestion, it would be under an obligation to submit “any communication referred to it” (art. 6, para. 1) to the State party - including, therefore, the identities of claimants - even if it deemed that to be highly prejudicial to the individuals concerned. For the decision on withholding a name to be left to the claimant, a specific provision would be required in the protocol.

7. Mr. AHMED suggested replacing the phrase “but the identity of the author shall not be revealed without the latter's express consent” with a clause such as “but the Committee shall retain the discretion as to whether or not to reveal the identity of the author, depending on the circumstances”.

8. The CHAIRPERSON queried the desirability of Mr. Ahmed's proposed change. If it were to be adopted, what would then prevent the Committee from ignoring a request for confidentiality and disclosing individuals' identities against their will?

9. Mr. AHMED said that it should be up to the Committee to decide whether a disclosure of identity was necessary in a given case. He could only repeat that a Government would be unable to repair damage unless it was informed of the claimant's identity.

10. Mr. ADEKUOYE agreed with the previous speaker. If an individual were to complain about his housing, for example, the Government would need to know where that person lived in order to be able to improve his situation. The Committee would be capable of judging when it would not be in the interests of the individual for his identity to be revealed.

11. Mrs. JIMENEZ BUTRAGUEÑO suggested that a representative from the Human Rights Committee who dealt with communications should be invited to discuss issues relating to draft articles 6 to 9, particularly as the text was based on the first Optional Protocol and the Human Rights Committee had direct experience of the subject matter under discussion.

12. The CHAIRPERSON endorsed that suggestion.

13. Mr. SIMMA said that Mr. Ahmed's and Mr. Adekuoye's readings of the proposed text of article 6 did not take into account the last words of paragraph 1, namely “without the latter's express consent”. They were presuming that authors would have good reason to believe that the State party might remedy their situation, in which case they would, of course, readily give their consent. In other cases, however, authors might have good reasons for remaining anonymous. The provision requiring consent surely answered the Committee's concern.

14. Mr. ALVAREZ VITA supported Mrs. Jiménez Butragueño's suggestion that a representative from the Human Rights Committee should be invited to speak on newly-introduced procedures for receiving communications. He was also anxious that the Committee should not confuse the terms “author” and “victim”. The “author” might be a non-governmental organization (NGO) submitting a communication on behalf of an individual. He therefore suggested inserting the words “or alleged victim” after the words “the identity of the author”. There were bound to be instances where a victim would wish to maintain confidentiality: in many countries, very subtle vengeance might be taken against a complainant.

15. Mr. RATTRAY said that he was fundamentally opposed to a procedure which would amount to ambush. An accuser should have enough conviction to confront the accused. Despite the Committee's concern over possible reprisals, if any credibility were to be given to an instrument seeking to provide an opportunity for redress, the procedure should be bolder. In court cases, victims sometimes had their identity withheld from the public, as in certain in camera proceedings dealing with alleged rape, but they were always required

to reveal their identity at least to the persons they were accusing. He was uneasy about a provision that would enable the Committee to withhold the complainant's identity.

16. The CHAIRPERSON said that he took the point made by Mr. Alvarez Vita. The reference, if retained, should in his view be to the "alleged victim", not to the "author". Furthermore, an international complaints procedure differed from a domestic legal procedure of the type described by Mr. Rattray in that it was provided to individuals unable to obtain justice at domestic level, either because they had lost their cases in court, or because their lives were at risk. The Committee would not wish to withhold their identity unless it had genuine grounds for fearing retaliation. To give a concrete example, the Honduras Government in the 1980s had prevented all health-care personnel from entering a particular area in its conflict with the guerrillas. The Committee had been able to address that issue without revealing individual identities. The Committee must not, however, accept anonymous complaints, since it would have to satisfy itself that they were genuine. Nor must it risk endangering individuals. At the same time, it was the individual who would be in the best position to determine whether his identity needed to be concealed. The Committee would not necessarily have enough information at its disposal to decide the issue from a distance.

17. Mr. TEXIER said that the Committee was wasting time debating a provision common to all similar protocols. He proposed a more positive formulation requiring the Committee to bring any communication referred to it under the protocol to the attention of the State party concerned, respecting confidentiality if the victim so requested. The issue had not created a problem in any other body.

18. Mr. RATTRAY said that he was not aware of any provision in the first Optional Protocol entitling a person to stipulate that his identity should not be revealed.

19. Mr. AHMED said he understood that a victim might not wish to reveal his name to the authorities concerned, but it would be a futile exercise for the Committee to approach Governments with anonymous complaints.

20. The CHAIRPERSON said that Governments would still be able to make reparation to groups even if individuals' names were withheld.

21. Mr. AHMED agreed, but maintained that the procedure would probably not work for a complaint relating to a lone individual.

22. The CHAIRPERSON proposed that the last part of paragraph 1, after the words "... the attention of the State party concerned", should be deleted and a note included in the report to the effect that the Committee considered that the possible need to protect the identity of the alleged victim or victims was a matter which should be dealt with in the relevant rules of procedure of the Committee.

23. Mr. WIMER ZAMBRANO suggested that in order to avoid repetition, the words "the attention of the State party concerned" might be replaced by the words "its attention".

24. The proposal by the Chairperson was adopted.

Paragraphs 50-53 (art. 7)

25. Mr. AHMED, referring to the first paragraph of draft article 7 (para. 53), remarked that the phrase "information made available to it by or on behalf of the author" raised the vexed question of exactly who was entitled to represent the victims of alleged violations before the Committee and whether their authorization was required for that purpose. Furthermore, the reference to "other sources" in the second sentence was rather too loose.

26. The CHAIRPERSON said that the emphasis in the first paragraph of the draft article was placed on the information to be taken into account by the Committee when dealing with a complaint, rather than on who was authorized to submit it. Of course, it would be the Committee's responsibility to ensure the reliability of its sources. The intent of the provision was that the Committee should have access to as many sources as possible; for as had been discovered when dealing with States parties' reports, it was not necessarily internationally recognized NGOs that provided the most reliable information.

27. Mr. WIMER ZAMBRANO endorsed the Chairperson's comments. The Committee must keep its options open in order to be able to decide on the reliability and usefulness of information rather than being guided by international recognition or other criteria. He, too, objected to the formula "by or on behalf of the author", preferring a reference to the alleged victims.

28. The CHAIRPERSON said that Mr. Ahmed's first concern might be met by replacing the words "by or on behalf of the author" with the words "by the alleged victims or those who act on their behalf". He suggested that the Committee should revert to the issue in connection with draft article 2.

29. It was so agreed.

30. Mr. RATTRAY said that there would be two safeguards in respect of information relating to a complaint submitted from sources other than the victim himself. First, the Committee would have to be circumspect in regard to generalized allegations that were not supported by documentary evidence. Second, under the provisions of draft article 7, any information taken into consideration by the Committee must be submitted to the State party concerned, which would have the opportunity to comment on or contest the allegations, as appropriate.

31. The CHAIRPERSON said that Mr. Rattray had drawn attention to one aspect of the Committee's work which distinguished it from other human rights treaty bodies namely that it was more receptive to NGOs, and it believed that information provided by such sources would not necessarily be harmful to States parties. On the contrary, it provided the requisite transparency that would enable Governments to respond more effectively to allegations.

32. Mr. AHMED suggested that some qualification of “other sources” was nonetheless required, as it was essential for the State party and the victim to know the source of the information received in order to assess it properly.

33. Mr. WIMER ZAMBRANO proposed that the text should include a recommendation to the effect that the information provided would be transmitted to the parties concerned for comment. That should meet Mr. Ahmed's concern and ensure the necessary transparency in the Committee's procedures.

34. The proposal was adopted.

Paragraphs 54 to 57 (art. 8)

35. The CHAIRPERSON indicated that paragraphs 54 to 57 had been revised taking account of earlier comments by Mr. Rattray so that the Committee would follow the practice of other comparable complaints procedures by issuing final views instead of a legally binding judgement.

36. Mr. WIMER ZAMBRANO said that the Spanish version of the first paragraph of draft article 8 (para. 57) should be aligned with the original English text by restating the subject in order to avoid confusion.

37. Mrs. JIMENEZ BUTRAGUEÑO, referring to the second paragraph of the draft article, proposed that the last words should be amended to read “... in accordance with paragraph 1 above”.

38. The proposal was adopted.

Paragraphs 58 and 59 (art. 9)

39. Mr. AHMED, referring to the first paragraph of draft article 9 (para. 59), proposed that the words “at any time” should be replaced by the words “at a mutually convenient date”.

40. The proposal was adopted.

41. Mrs. JIMENEZ BUTRAGUEÑO said that she was not entirely satisfied with the wording of the third paragraph of draft article 9, in particular the words “its examination of the matter”.

42. The CHAIRPERSON said that so long as members had no difficulty with the substance of the text, it would be best to avoid too many drafting amendments as the proposed optional protocol would in any case be scrutinized by government representatives at a later stage.

43. Mr. WIMER ZAMBRANO said that the word “its” might be preferable to the words “of the Committee” and “the Committee's” in the first and second paragraphs respectively.

Paragraphs 60-62 (arts. 10 and 11)

44. Mr. TEXIER questioned the need for the statement in the first paragraph of draft article 11 (para. 62) to the effect that the Committee should meet for such period as was necessary to carry out its functions under the protocol.

45. Mr. AHMED said he considered that statement useful since, as a result of new duties under the optional protocol, the Committee might have to meet at times other than its regular twice-yearly sessions. Such a provision would ensure that the Committee obtained the necessary authorization from the parent bodies for such meetings. Furthermore, he suggested that a specific reference to the financial implications of such meetings should be included in the second paragraph of the draft article.

46. Turning to the proposed text of article 10 (para. 61), he suggested that States parties might want to be familiar with the rules of procedure in question before signing the optional protocol. Perhaps a reference to that effect should be included in the explanatory text.

47. Mr. WIMER ZAMBRANO agreed on the importance of retaining the first paragraph of draft article 11. Perhaps the words “for such period as is necessary” could be replaced by “especially” to make it clear that the Committee would be holding special meetings to carry out its new functions under the protocol. However, he did not feel it necessary to include a specific reference to the financial implications of such meetings in the second paragraph. Also, the reference to the availability of expert legal advice could be deleted, since members were already sufficiently specialized in the matter.

48. The CHAIRPERSON said that, although he understood Mr. Ahmed's concern regarding draft article 10, the idea that States parties must agree to the rules of procedure was impractical. However, a note could be included to the effect that the Committee would draw up rules of procedure following the adoption of the protocol and that they would be made public before the instrument was opened up for signature.

49. Concerning draft article 11, the first paragraph was undoubtedly necessary, although he could not endorse Mr. Wimer Zambrano's suggestion, since the workload of other committees with comparable complaints procedures had not thus far justified the convening of special sessions, which would entail enormous additional expense. None the less, some reference to the need for adequate resources would be useful. He proposed inserting the word “finances” after the words “the necessary staff” in the second paragraph. The reference to expert legal advice should be retained, particularly since the Human Rights Committee had felt that it had not been given adequate support in that regard. One of the main objectives of the complaints procedure was that

it should allow the Committee to carry out a detailed legal analysis of the situation. It would also serve as a measure to protect States by ensuring that all legal matters were duly taken into account. If he heard no objection, he would take it that the Committee wished to adopt these proposals.

50. It was so decided.

Paragraphs 63 and 64 (arts. 12-18)

51. The CHAIRPERSON invited comments on the proposed text of articles 12 to 18, as contained in his 1994 report on the draft optional protocol (E/C.12/1994/12).

52. Mr. SIMMA noted that, under the terms of draft article 12, paragraph 1, the protocol would be open for signature by any State which had signed the Covenant. That provision followed the wording of the first Optional Protocol, but the option of signature was no longer available: a State that was not a party to the Covenant could become so only by accession. He therefore proposed that article 12, paragraph 1, should read: "This Protocol is open for signature by any State party to the Covenant."

53. The proposal was adopted.

54. Mr. SIMMA, turning to draft article 13, asked why the number of ratifications or accessions required for the protocol to enter into force had been set as low as five. The first Optional Protocol had required 10. He recognized that the draft protocol was not likely to be popular with Governments, and that 5 might therefore be a politically more realistic number, but he would still favour 10. He wondered what requirement was being set by the Committee on the Elimination of Discrimination against Women in its draft optional protocol.

55. The CHAIRPERSON said that setting a higher requirement would delay the entry into force of the protocol. He suggested that action on the matter should be deferred.

56. It was so decided.

57. Mr. AHMED, referring to draft article 15, said that it would be a mistake, both legally and politically, to retain a provision under which no reservations to the protocol would be permitted. The first Optional Protocol had no such clause and it would be logical for the Committee to follow suit. Moreover, there was a danger that some 10 to 15 States that might sign the protocol, subject to minor reservations, would otherwise be fearful of doing so.

58. Mr. SIMMA observed that the first Optional Protocol dated back to 1966, when the human rights climate had been quite different. Moreover, the Second Optional Protocol, of 1989, did contain a clause forbidding reservations, except on one specific point. Thirdly, the Human Rights Committee had adopted

General Comment 24, which stipulated that there should be no reservations to the first Optional Protocol. The position adopted in the draft protocol would depend on the form eventually preferred by the Commission on Human Rights, to which the Committee would be presenting various alternatives. If the draft protocol contained the possibility of choice, or an opting-out procedure, there was no need to provide for the possibility of registering a reservation. Scope for reservations would be required only if the comprehensive approach was adopted. States could in any case not lodge reservations to procedural matters, only to substantive ones.

59. Mr. KOUZNETSOV said that the Committee would be wise to follow the first Optional Protocol in making no reference to the permissibility or otherwise of reservations. Mr. Simma's view was theoretically correct, but in practice it was to be hoped that as many States as possible would support the optional protocol. It would in any case not be an easy decision for Governments, above all in view of the financial considerations. It would be helpful to them to make no mention of reservations at all and to let them take the initiative themselves, if they so wished.

60. Mr. AHMED remarked that it was still a sovereign right to lodge reservations to a treaty. He would also point out that the Second Optional Protocol (art. 10) did provide for reservations.

61. Mr. SIMMA said that the relevant provision in that Protocol was article 2, under which reservations were prohibited except in a very specific set of circumstances.

62. Mr. TEXIER said that he had been in favour of draft article 15, but following the previous day's decision, with two dissenting voices, that the protocol should be considered in its entirety it would be contradictory to retain the article regrettable though that was.

63. Mr. KOUZNETSOV said that the permissibility of reservations was appropriate in some contexts and not in others. The Second Optional Protocol should not be compared with the Committee's draft protocol.

64. Mr. SIMMA said that Mr. Texier's argument was correct only if no distinction were made between reservations and the use of an opting-out provision, which technically speaking were not the same. There was therefore no logical hindrance to including both the possibility of an opting-out procedure and a prohibition on reservations. He challenged members who favoured permitting reservations to give a single example of a reservation that would not be covered by the opting-out or opting-in approaches. As for procedural issues, if a State tried to enter a reservation limiting an individual's access to the Committee, his strong presumption was that such an action would be deemed impermissible under the Vienna Convention on the Law of Treaties.

65. Mr. WIMER ZAMBRANO said that substantive and procedural issues should not be confused. He supported Mr. Texier's view that article 15 should be deleted. It would be more convenient to say nothing about reservations and let States decide for themselves.

66. The CHAIRPERSON, agreeing that there was no valid comparison between the draft protocol and the Second Optional Protocol, said that the de facto implication of making no mention of reservations was that they were permissible. He suggested a compromise based on Mr. Simma's comments on reservations relating to the procedural aspects of the draft protocol: a textual note could be appended to the Committee's report, stating that if the Commission adopted the comprehensive approach, it might then be appropriate to consider permitting reservations to the protocol. Such a note would, he believed, take full account of the concerns of Mr. Ahmed and others, but at the same time would prevent States from lodging reservations that could undermine the whole purpose of the protocol.

67. Mr. AHMED observed that 36 States had lodged reservations to the Covenant - France, for example, had entered a reservation on the definition of immigration, while the Muslim countries had made reservations in relation to the Shariah - and it stood to reason that they would insist on the same reservations to the draft protocol. If it were not left to States to make their own decision, there was a danger that some 30 to 40 States would refrain from signing the protocol.

68. Mr. SIMMA said that the draft protocol did not add to States' obligations as such, so that if they had already limited their obligations under the Covenant there would be no need for further reservations under the protocol. They would remain subject to all the provisions of the Covenant except those to which they had already lodged a reservation.

69. The CHAIRPERSON said that the point at issue was new reservations to the proposed protocol. That was the reason for his suggestion that, if the Commission decided to make the protocol applicable to all rights, it might wish to consider the appropriateness of permitting reservations to be lodged.

70. Mr. WIMER ZAMBRANO said that it was well known who was for retaining draft article 15 and who was against. There was no need for further discussion, the more so as the text was not definitive but merely a proposal that would be discussed by other United Nations bodies.

71. Mr. AHMED said that he preferred to have no reference of any kind to reservations. If there was an explanatory text, it would reveal the divisions within the Committee.

72. The CHAIRPERSON pointed out that his suggestion tended to strengthen the hand of members who favoured the permissibility of reservations. Moreover, it would be wrong to give the impression that no discussion on such an important issue had taken place.

73. Mr. TEXIER said he feared that an indication that some members were for the permissibility of reservations and others against might be used as a weapon by opponents of the draft protocol.

74. Mr. RATTRAY said that he sensed from the discussion that there was a legitimate concern that the optional protocol should not include draft article 15 with its express prohibition on the making of reservations. However, if draft article 15 were to be deleted, the question would arise as to whether the Committee should report to the Commission on Human Rights that there had been support in the Committee for the comprehensive coverage of the prohibition, and also for an opting-out provision, and that if the Commission were to decide in favour of the former solution, then it might wish to consider the possibility of permitting reservations. The way in which reservations would be made would have to be discussed at that stage. They could be permitted even if there was no express statement to that effect, the matter being left to interpretation under the Vienna Convention on the Law of Treaties; alternatively, an express provision for making them could be included. In neither case would the text contain an explicit prohibition of reservations.

75. The CHAIRPERSON said that in his view draft article 15 should be deleted and an explanation given as to the action that might be taken if the Commission decided in favour of a comprehensive coverage.

76. Mr. AHMED observed that reservations could be either substantive or procedural. The latter had nothing to do with specific rights, and States parties could not be barred from making them.

77. The CHAIRPERSON replied that it was doubtful whether most international lawyers would admit a right to enter a reservation regarding a procedure. That would lead to a situation in which different procedures were applicable for different States parties.

78. Mr. AHMED pointed out that some States parties might wish to make reservations concerning, for example, the status of NGOs that could act on behalf of alleged victims.

79. The CHAIRPERSON observed that once reservations to procedures were admitted, the overall procedural balance would be destroyed.

80. Mr. ALVAREZ VITA expressed his opposition to the deletion of draft article 15 and suggested that a vote should be taken on the issue. The Committee should not be swayed by political considerations.

81. Mr. SIMMA said he recognized that there were a number of political considerations both in favour of and against the possibility of entering reservations. However, certain provisions of international human rights law also needed to be taken into account. As he had mentioned earlier, they had found perhaps their clearest expression in General Comment 24, adopted by the Human Rights Committee in November 1994, paragraph 14 of which stated that the Committee considered that reservations relating to the required procedures

under the first Optional Protocol would not be compatible with its object and purpose. Substantive obligations might be the subject of an opting-out procedure. He would be ready to accept a compromise solution.

82. The CHAIRPERSON observed that the Committee had two basic options. The first was to indicate explicitly that some members felt strongly that there should be no reservations, while others insisted that provision for them should be made. A further exposition of both positions could be provided. Alternatively, the Committee could agree that draft article 15 would not be included, but would add a note to the effect that if the Commission on Human Rights did not provide for opting-out, it would be appropriate for it to consider the possibility of lodging reservations.

83. Mr. AHMED said that he could accept either arrangement.

84. Mr. ALVAREZ VITA asked the Chairperson whether the reading of all the preceding section of the draft optional protocol would suggest to him, in his capacity as a jurist, that the text had been drawn up by a body of politicians or by a committee of experts.

85. The CHAIRPERSON replied that unfortunately the Committee was mirroring the current state of international human rights law, which had led to no conclusion being adopted on the matter of reservations in, for instance, the Convention on the Rights of the Child or the Convention on the Elimination of All Forms of Discrimination against Women. In fact, the number of reservations lodged had been far larger than expected by the vast majority of international lawyers. The general failure to address the issue or to provide any procedure by which the acceptability or non-acceptability of reservations could be established had left the whole situation in dreadful confusion. That was one reason why the International Law Commission was currently considering the issue and why the Human Rights Committee had felt it necessary to adopt its general comment indicating that States had to minimize the number of reservations they entered and that procedural reservations were not acceptable. All in all, it would be better for the Committee on Economic, Social and Cultural Rights not to take a strong stand; instead, it could indicate that different views had been expressed in the Committee and then note that if the Commission on Human Rights opted for the comprehensive approach, it might wish to consider the possibility of reservations being lodged. If he heard no objection, he would take it that the Committee agreed to follow that course, in which case he would draft a text along those lines.

86. It was so decided.

87. Mr. SIMMA, referring to draft article 17, pointed out that the period for a denunciation to take effect was one year, instead of the three months provided for in the first Optional Protocol. That was, in his view, an improvement.

Paragraphs 45 and 46 (art. 5)

88. The CHAIRPERSON recalled that the final text of the first paragraph of draft article 5 (para. 46) had still to be decided. He read out the alternative wording prepared by Mr. Ahmed and Mr. Rattray:

> "If, at any time after the receipt of a communication and before a determination on the merits has been reached, a preliminary study gives rise to a reasonable apprehension that the allegations, if established, could lead to irreparable harm, the Committee may request the State party concerned to take such interim measures as may be necessary to avoid such irreparable harm."

89. The proposed text was adopted.

Paragraphs 39 and 40 (art. 2)

90. The CHAIRPERSON said that another issue still outstanding concerned whether third parties could act on behalf of alleged victims, with no requirement of authorization; whether they needed to be authorized to do so; or whether they needed to be explicitly or officially authorized to do so.

91. Mr. SIMMA said that he preferred the first option, in which no mention would be made of authorization and where the decision as to the degree of formalization required would be left to the rules of procedure and further practices of the Committee. The Human Rights Committee had consistently interpreted article 1 of the first Optional Protocol to accommodate the situation where a group or another person acted on behalf of the direct victim. For the present Committee to include a reference to persons "authorized to act on behalf of" the alleged victim would run counter to the practice of the Human Rights Committee. In actual fact, the victim could act for himself before the Committee, or through a lawyer, or another person could act on his behalf. However, the issue was not whether or not the alleged victim could be represented by a lawyer but whether another individual or group could act on his behalf. There would certainly be cases where formal authorization could not be obtained, and provision should be made for them.

92. The CHAIRPERSON inquired whether the Committee could accept the wording "acting on behalf of". It clearly wanted third parties to act, but it also wanted the right to act to be restricted to third parties that could demonstrate in some way that they were acting on behalf - and in the interests - of the alleged victim. The problem was to find a single word that would indicate the nature of that linkage. The word "authorized" would impose too high a burden of proof. The difficulty might be overcome if the Committee, in an explanatory note, clearly indicated that it would expect any third party to demonstrate that it was acting on behalf of the alleged victim. He hoped that Mr. Ahmed would be able to accept that solution.

93. Mr. AHMED said that he was in favour of using the word "authorized" or the word "designated" in order to avoid a situation in which an individual or group could come before the Committee and make a claim against a Government

without the alleged victim knowing anything about it. There must be enough evidence that the third party was, in fact, acting with the knowledge and consent of the alleged victim. Otherwise chaos would result.

94. The CHAIRPERSON pointed out that the need for a person to be "designated" or "authorized" imposed a legal requirement which would incapacitate a person who was not allowed to communicate freely with the outside world. He asked Mr. Ahmed whether he would accept the words "acting on behalf of", if it was indicated in an explanatory note that there must be a reason to believe that the group or person acting on behalf of the alleged victim was doing so with the latter's knowledge and consent.

95. Mr. AHMED said that he was prepared to compromise on the issue so as not to obstruct the Committee's work.

96. The CHAIRPERSON suggested that the Committee should conclude its consideration of the draft optional protocol at a later meeting.

The meeting rose at 1.05 p.m.