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ON CIVIL AND
POLITICAL RIGHTS**

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Sixth session

SUMMARY RECORD OF THE 125th MEETING

Held at Headquarters, New York,
on Tuesday, 10 April 1979, at 10.30 a.m.

Chairman: Sir Vincent EVANS

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The meeting was called to order at 10.55 a.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

1. The CHAIRMAN recalled that at the preceding meeting he had asked whether the communication from Chile concerning the raising of the state of siege and lifting of the curfew, referred to in document A/33/331, had been issued as a Committee document. That communication appeared in document A/33/293, which had now been circulated and which also contained the replies received from a number of Governments on the question of the protection of human rights in Chile.

ADOPTION OF FURTHER RULES OF PROCEDURE OF THE COMMITTEE IN ACCORDANCE WITH ARTICLE 39 OF THE COVENANT (CCPR/C/L.2/Add.1)

2. The CHAIRMAN said that, since the 10 declarations required under the Covenant for the entry into force of article 41 had now been made, the Committee should proceed to consider the preliminary draft provisional rules of procedure (CCPR/C/L.2/Add.1), particularly section XVI.

3. Basically, the Committee must now decide whether or not it was satisfied with the wording of the rules in that section, which conformed as much as possible to the text of article 41 of the Covenant.

4. Mr. OPSAHL said he was pleased that article 41 had entered into force although he considered it unlikely that it would have to be applied, since only 10 States parties to the Covenant had made the declaration under article 41 and, of them, eight were members of the Council of Europe and the other two were Finland and New Zealand.

5. Under the terms of the Covenant, communications would be received and considered only if submitted by a State party which had made a declaration recognizing in regard to itself the competence of the Committee, and it seemed to him unlikely that that would occur in relation to Finland and New Zealand. As far as the members of the Council of Europe were concerned, the States parties to the European Convention for the Protection of Human Rights had undertaken not to avail themselves of other procedures for the settlement of disputes. Moreover, experience showed that the number of complaints between States in Europe was extremely small in comparison with the number of individual complaints.

6. Consequently, he did not think that the matter was urgent or that there was much reason to be optimistic about it. In any event, the rules under consideration could not cover all points of procedure, which would have to be decided on a case-by-case basis.

7. Mr. LALLAH pointed out that the preliminary draft rules were practically a repetition of the provisions of the Covenant, for the simple reason that article 41 laid down the procedure to be followed by the Committee in the case of complaints between States. What the Committee must do now was to determine its competence more fully and in greater detail and, taking into account the time-limit

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set in article 41, paragraph 1 (h), establish the procedure it would follow in the matter. Since the Committee had 12 months in which to submit its report after receiving the notice from the State party concerned, it would not be possible to hear statements by witnesses. Perhaps a method similar to that which applied in the case of communications from individuals, and which seemed to have proved suitable, should be adopted. He suggested that a working group should be set up to give thorough consideration to the question, taking into account the general comments made by members of the Committee.

8. Mr. SADI agreed that the limitations pointed out by Mr. Opsahl existed, but felt that the Committee was legislating for the future. He personally did not favour going into too much detail in the rules being considered by the Committee, since that might deter some States which would perhaps be prepared to accept article 41 of the Covenant as it stood.

9. Mr. PRADO VALLEJO agreed with the comments made by Mr. Opsahl, and said that he considered it important to take advantage of the experience acquired by the Committee in the two years which had elapsed since the preparation of the preliminary draft provisional rules of procedure. For example, with regard to domestic remedies, which were referred to in article 41, paragraph 1 (c), and in draft rule 74, use might be made of the machinery that had been established to deal with communications from individuals.

10. He agreed that a working group should be set up to consider the question.

11. Mr. HANGA said that the Committee's rules of procedure should explain the provisions of the Covenant in greater detail. The preliminary draft should be considered in a logical order, reflecting the normal sequence in which procedures would be applied. The Committee should therefore complete its consideration of rule 73 before taking up rule 74.

12. Mr. KOULISHEV agreed that the provisional draft contained in document CCPR/C/L.2/Add.1 should closely follow articles 41 and 42 of the International Covenant on Civil and Political Rights. In his view, it would be useful to include in the new section of the rules a reference to article 44 of the Covenant, under which the States parties could have recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them. It seemed to him desirable on the whole to proceed cautiously for the present; as time went by and experience was gained, improvements could be made in the rules of procedure.

13. Mr. TARNOPOLSKY said he agreed with Mr. Opsahl that the procedure provided for in article 41 of the Covenant would not be used very often; consideration of the relevant section of the preliminary draft should perhaps, therefore, be deferred until the next session of the Committee. The preliminary draft (CCPR/C/L.2/Add.1) conformed strictly to article 41 of the Covenant and did not resolve the basic problem arising from the fact that the Committee had only 12 months in which to submit its report. That time-limit was very short, especially in view of the fact that, before proceeding to consider the merits of the case,

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(Mr. Tarnopolsky)

the Committee must decide whether the communication was admissible - a much more complicated question in the case of States. Nor should it be overlooked that the Committee might offer its good offices to the States parties concerned with a view to a friendly solution, resulting in a delay in the proceedings. The establishment of working groups might help to solve that problem.

14. Mr. MOVCHAN observed that it was difficult to draft a section of the rules of procedure for which there was no previous experience, especially when it related to the implementation of one of the most important articles of the Covenant. The Committee should therefore confine itself to an exchange of general views and should not go into detail.

15. In accordance with that approach, the first point he would make was that the basic constitutional instrument, to which the Committee must conform, was the International Covenant on Civil and Political Rights. Secondly, at the time when the existing rules had been drafted, it had been agreed that it was not desirable to make too many references to articles of the Covenant, particularly where the latter were not very clear, as in the case of the reference in rule 74 of the preliminary draft to the introductory part of article 41, paragraph 1, of the Covenant. Thirdly, it was necessary to follow a logical order in the new rules and to begin by defining the competence of the Committee. From that standpoint, the preliminary draft was not badly drawn up, but some improvements were needed; for example, rule 74 should be the first one in the section, and the reference in that rule to subparagraph (c) should appear separately as the third or fourth rule in the section.

16. On the question how detailed the new rules should be as compared with article 41 of the Covenant, it should be borne in mind that the Committee must conform strictly to the provisions of the Covenant and that prior experience in considering communications from States was lacking. In any event, advantage could be taken of the expertise of the members of the Committee in order to make the rules of procedure a little more detailed, subject to any future changes that might be necessary, since the rules were not a dogma but a guide for practical action.

17. Lastly, he did not feel that the adoption of the new rules was a matter of urgency, and he therefore supported the Chairman's suggestion that there should be an exchange of general views in the Committee, after which a small working group should be set up to prepare, on the basis of those opinions, of the preliminary draft produced by the Secretariat and of the Covenant, a new set of draft rules for consideration by the Committee.

18. Mr. DIEYE said that he had been impressed by the cautious attitude taken in the Committee towards the drafting of the new rules and by the need to make them consistent with the remainder of the rules of procedure, that being an extremely important factor. On the whole, the document prepared by the Secretariat was satisfactory. It should be borne in mind that, if the rules deviated from the Covenant, that might deter other States from making the declaration which was necessary in order for communications to be receivable.

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(Mr. Dieye)

19. Since the adoption of the new rules was not an urgent matter, perhaps further thought should be given to their formulation and a small working group should be set up to prepare a new draft which would not be too detailed, would not depart very much from the text prepared by the Secretariat and would take into account proposals made in the Committee.

20. Mr. TOMUSCHAT agreed with the previous speakers and pointed out that the Secretariat, in preparing the preliminary draft, had essentially reproduced articles 41 and 42 of the Covenant. The Committee should first of all decide whether that approach was appropriate or whether the rules should be more detailed. In his view, a great deal of flexibility was required in the procedure, especially bearing in mind the time-limit imposed on the Committee for each case.

21. Another question which must be settled was whether the rules of procedure should specify what means of taking evidence the Committee might use. It would be desirable in that regard to retain the flexible approach adopted in rule 94, concerning individual communications. It might be preferable to leave the question to be dealt with on a case-by-case basis, so that the consent of the States concerned could be obtained, since the taking of oral evidence, for example, would have financial implications that would have to be borne by those States.

22. The possibility of acting through working groups, or even individual members, should also be provided for, and it must be decided whether the Committee should take into account the provisions of other international instruments. Lastly, although the preliminary draft prepared by the Secretariat was satisfactory, some additional provisions were required, and he therefore favoured the establishment of a small drafting group.

23. Mr. BOUZIRI felt that a small working group could prepare the draft rules of procedure, taking into account the general comments made in the Committee. Theoretically, article 41 was already applicable, and the Committee should therefore specify the appropriate procedure. If the provisions were too vague, each State would be able to interpret them as it wished and disputes would arise over questions of procedure, which should be avoided. On the other hand, excessive detail would also be undesirable. In his view, the provisions contained in the preliminary draft prepared by the Secretariat, on the basis of article 41 of the Covenant, struck the necessary balance. Both article 41 of the Covenant and the preliminary draft rules of procedure prepared by the Secretariat were based on existing rules and international experience, and it would be prudent to make the text of the draft rules conform as closely as possible to article 41; in any event, improvements could always be made in the light of the experience gained by the Committee.

24. The comments made with regard to article 44 had seemed to him to be very relevant, and they should be taken into account by the working group.

25. Mr. LALLAH explained that his intention in referring to the question of statements by witnesses had been to point out that it was not certain that such

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(Mr. Lallah)

statements were possible under the Covenant, and that the working group should therefore consider the matter. In that connexion, the group could take into account possible differences between the procedure applied to communications from individuals and that which could be applied to States. Perhaps in the latter case the question of admissibility and the communication itself could be considered together, so that the procedure would not be as lengthy as in the case of communications from individuals, especially in view of the time-limit set in article 41, paragraph 1 (h), of the Covenant.

26. The CHAIRMAN said that there seemed to be substantial agreement on how the Committee should proceed. Although the matter might not be particularly urgent, it would be desirable to begin the consideration and formulation of the draft rules, even if they were not completed at the current session. Of course, the rules would be provisional in character and would have to be revised in the light of experience.

27. There was also general agreement that the preliminary draft prepared by the Secretariat was too succinct; the rules should be more detailed, but not excessively so, especially at the present stage, when there were no precedents with respect to the application of article 41. In the drafting of the rules, account should be taken of the experience gained, especially in connexion with the submission of communications from individuals. The rules relating to that function of the Committee should be consistent in form, style and content with those governing other functions. They should also be flexible, so as to allow for the establishment of ad hoc procedures in dealing with specific cases.

28. It had also been pointed out that the rules should follow a logical sequence. In that regard, guidance could be found in the rules already adopted with respect to the procedure for the consideration of communications received under the Optional Protocol (rules 78 et seq. of the provisional rules of procedure adopted by the Committee at its first and second sessions). Those rules could be divided into four categories: firstly, those relating to the transmission of communications to the Committee; secondly, general provisions regarding the consideration of communications by the Committee or its subsidiary bodies; thirdly, rules concerning procedures to determine admissibility; and, lastly, rules relating to the consideration of communications.

29. With regard to the proposal that a small working group should be set up to prepare a revised draft, he was not sure that that should be done immediately, since other members of the Committee might wish to make suggestions. It might therefore be preferable to give more detailed consideration to the contents of the various rules, and the most orderly way of doing so would be to divide them into the four categories he had mentioned.

30. Mr. SADI said that, in order to expedite discussion and avoid duplication of the work of the working group, members should confine their statements in the full Committee to general comments on the provisions of the preliminary draft.

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31. Mr. PRADO VALLEJO said that, although he had no objection to considering the question in the logical order suggested by the Chairman, it might complicate matters and delay the adoption of the rules if that were done in the Committee without there being a basic document available. It would be better to set up a working group which would receive suggestions from members of the Committee concerning the various provisions.

32. Mr. LALLAH felt that members of the Committee who had made only general comments might wish to refer specifically to the various rules and that they should be given an opportunity to do so, since their suggestions would be useful to the working group.

33. The CHAIRMAN said that it would be best to consider the matter in stages, following the order in which the Committee must proceed under article 41 of the Covenant, and he suggested that the question of the notice to the Committee should be considered first. There might be problems concerning the interpretation of article 41. The Committee would have no knowledge of the matter until it received the notice provided for in article 41, paragraph 1 (b), and consequently might not be aware of the preliminary negotiations under paragraph 1 (a).

34. There were other questions that should be considered. It had been suggested that some guidance should be provided with respect to the information to be furnished along with the notice provided for in article 41, paragraph 1 (b), concerning, for instance, what violation of the Covenant had been committed and what action had been taken to exhaust domestic remedies and to settle the matter in accordance with paragraph 1 (a). In the case of communications from individuals, the Secretary-General could request more information from the author of the communication under section XVII of the rules of procedure, and a similar provision should perhaps be included in section XVI. There was also the question whether the Secretary-General should maintain a register of communications received under article 41 of the Covenant. Lastly, some rules would be needed concerning the information to be transmitted to members of the Committee about communications registered by the Secretariat.

35. Mr. SADI pointed out that rule 73 began rather abruptly with the settlement procedure prescribed in article 41 of the Covenant, that being the stage which most concerned the Committee, without making any reference to the preceding stages referred to in subparagraph (a). From a drafting standpoint, that did not seem logical, and he therefore believed that the contents of subparagraph (a) must be reflected in some way. The working group could perhaps bear that point in mind and include it in an additional rule.

36. Mr. OPSAHL agreed with Mr. Sadi, but pointed out that it was not within the Committee's competence to lay down rules for the initial stage, when a dispute was being dealt with bilaterally by the parties. At most, it could reiterate the terms of the Covenant for the purpose of elucidation, but it could not go beyond that.

37. Mr. LALLAH emphasized that the Covenant, and not the rules of procedure, was the instrument under which the States parties had the right to refer a matter

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(Mr. Lallah)

to the Committee. The Committee could only decide how that right was to be exercised, and it must draw up the rules of procedure specifically for that purpose.

38. He suggested that the first paragraph of rule 73 should begin by indicating how the States parties were to bring the matter to the attention of the Committee, as had been done in rule 78 of the provisional rules of procedure adopted at the first and second sessions of the Committee (A/32/44), in which great care had been taken not simply to repeat the terms of the Covenant but to indicate clearly to the State party concerned how it should proceed to exercise its right. The paragraph should then go on to the question of the notice to the Secretary-General. There would be a second paragraph mentioning the points to be included in the notice, namely, the provisions of the Covenant which the State party considered another State party was not giving effect to, how the matter had been brought to the attention of the State which had allegedly committed the violation, the date of the communication and the remedies taken. A third paragraph would provide for the possibility of the Secretary-General's requesting clarification. Lastly, reference would be made to the preparation of a register or list of the communications received and to the Secretary-General's obligation to inform the members of the Committee, perhaps in summary form.

39. Mr. KOULISHEV said that, in general, he agreed with the Chairman's approach to the question. While it was true that, as Mr. Opsahl had said, the Committee's functions began with article 41, paragraph 1 (b), of the Covenant, he agreed with the Chairman and with Mr. Lallah that the rules of procedure should include a provision concerning the contents of the communication from a State party alleging that another State party was not fulfilling its obligations under the Covenant. He also thought it advisable to make provision for requesting additional information and for maintaining a register of communications.

40. Lastly, it would be advisable to amend the French version of the last phrase of paragraph 1 of rule 73 in the preliminary draft to correspond exactly to the last part of article 41, paragraph 1 (b), of the Covenant, so that there would be no doubt whom the notice should be given to. Instead of the wording "l'un comme l'autre de ces Etats auront le droit de soumettre cette question au Comité en lui adressant une notification; celle-ci sera également transmise à l'autre Etat intéressé", that phrase should read: "l'un comme l'autre auront le droit de la soumettre au Comité, en adressant une notification au Comité ainsi qu'à l'autre Etat intéressé".

41. Mr. TARNOPOLSKY said that the first notice, referred to in article 41, paragraph 1 (b), of the Covenant, should be as full as possible, including a brief description of the matter which had not been adjusted to the satisfaction of both States parties concerned and, in general, the information specified in rule 80 of the provisional rules of procedure adopted at the first and second sessions (A/32/44). In addition, copies of the original communication and the reply to it should be forwarded to the Committee so that, when the period of 12 months after the date of receipt of the notice referred to in subparagraph (b) began to run, the Committee might already have all the necessary information, as specified in rule 80 concerning communications from individuals.

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(Mr. Tarnopolsky)

42. With respect to article 44, which stated that the provisions for the implementation of the Covenant should not prevent the States parties from having recourse to other procedures for settling a dispute, he said that the Committee, in order to avoid having its work interrupted, should decide whether, after a certain lapse of time, it would consider that, so far as it was concerned, that article no longer applied.

43. Mr. HANGA, referring to Mr. Lallah's suggestion, said that the question of domestic remedies should be dealt with in the first clause of the provisional rules of procedure, relating to the application of article 41, since paragraph 1 (c) of that article stipulated that "The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter". A question which should be raised was whether the Committee could ascertain ex officio whether all such remedies had in fact been exhausted, because, if they had not, the Committee would be relieved of the obligation to consider the communication in question.

44. Mr. MAZAUD (Representative of the Secretary-General) said he had been informed by Mr. Uribe Vargas that he would be unable to attend the current session of the Committee. He also announced that India had that day deposited its instrument of accession to the Covenant.

The meeting rose at 12.55 p.m.