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on Civil and
Political Rights**

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HUMAN RIGHTS COMMITTEE

Sixth session

SUMMARY RECORD OF THE 151st MEETING

Held at Headquarters, New York,
on Friday, 27 April 1979, at 10.30 a.m.

Chairman: Mr. KOULISHEV

later: Mr. MAVROMMATIS

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The meeting was called to order at 11 a.m.

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

1. The CHAIRMAN drew the Committee's attention to the latest version of the new draft rules of procedure of the Committee prepared by the Working Group, which had been introduced the previous day by Sir Vincent Evans. He announced that the adoption of the rules would be left until the next session, because at the current session there had not been the necessary quorum.
2. Sir Vincent EVANS said that in the discussions of the Working Group a very important point had emerged, perhaps the sole question of substance which the Committee had before it in connexion with the new rules of procedure. All the members of the Working Group considered that in article 41 of the Covenant the procedure which the General Assembly would like the Committee to follow was perhaps not set forth clearly enough; however, there was some disagreement about the meaning of that article with respect to the question of the time at which the Committee could participate in the procedure established in article 41, in particular, regarding the possibility of its intervening in some way at the beginning of the six-month period mentioned in paragraph 1 (b). It was a question of whether the initial communication in which a State party alleged that another State party was not fulfilling its obligations under the Covenant, which initiated the six-month period reserved for the possible bilateral settlement of the matter, should be transmitted to the Committee when the six-month term began to run. While there seemed to have been general agreement that, even if the communication was transmitted at that point, the Committee should not embark on consideration thereof until the expiry of the six months provided for, some members considered it appropriate that either of the two States concerned could send a copy of the communication to the Committee, in order that the latter might in some way participate from the outset. On the other hand, other members of the Committee believed that the latter should not accept any communication until the completion of the six-month period. In his view, the latest version of the draft rules did not settle that question definitively, because, although it did not require States to transmit the communication to the Committee, it did not preclude either of them doing so. Accordingly, the question remained unresolved until it was seen what happened in practice and what comments were made by the parties.
3. Mr. LALLAH said that, although the draft rules as formulated after the discussion did not present any problems for him, he was one of those who believed that the Committee should not take cognizance of the communication until the expiry of the period set for friendly bilateral settlement.
4. Although article 41 might have been drafted differently if it had dealt only with procedural questions, the provision had a mixed character, because it laid down at one and the same time the substantive rights of the parties and the procedure for giving effect to them. In his view, paragraph 1 of article 41 did

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not have a chronological character but merely indicated in a general manner the requirements for the acceptance of communications. Consequently, in the antepenultimate line of that paragraph the word "received", which, in any event, did not imply that they had been legitimately received because all the requirements had been fulfilled, might have been omitted. The chronological part of article 41 began with subparagraph (a), which had nothing to do with the Committee, which was mentioned for the first time in subparagraph (b) à propos of the notice that either of the States concerned might give upon the expiry of the six-month term.

5. He placed that interpretation on article 41 on the basis of the fact that the Covenant concerned not only the Committee but all States parties to the Covenant. Accordingly, there arose the possibility of a friendly bilateral solution, in which there should be no intervention by any third party, which the Committee would be at that stage. Consequently, he believed that none of the States parties should be under an obligation to transmit a communication to the Committee until the term had expired and it was considered that there was no possibility of a friendly settlement.

6. Mr. GRAEFRATH said that he fully agreed with Mr. Lallah, because the Committee should not and could not impose such an obligation on the States parties.

7. Mr. TOMUSCHAT, referring to the case where other international instruments might impose on States parties the obligation to have recourse to procedures for the settlement of disputes that were different from that laid down in article 41 of the Covenant, believed that there should be some clarification of that point, because in the new draft rules there was no indication concerning the procedure to be followed by the Committee in such a case.

8. The CHAIRMAN said that the new draft rules of procedure should have reflected the fact that article 44 of the Covenant did not prevent the States parties from having recourse to other procedures for settling a dispute. To that end, he suggested that a provision should be included stating that any matter submitted to the Committee in accordance with paragraph 1 (b) of article 41 of the Covenant could be withdrawn by both parties by agreement, in accordance with article 44.

9. In his view, States parties could not be placed under an obligation to submit to the Committee the communications which they transmitted to another State. That would not prevent a State party, if it so wished, from informing the Committee of the existence of a communication. In such a case, the State concerned would inform the Secretary-General, in his capacity as depositary of the Covenant, that it was sending the communication to another State; the Secretary-General would so notify all the States parties and, would probably have to notify also the Committee, as the organ entrusted with the implementation of the Covenant.

10. Lastly, with regard to the possibility, provided for in rule 76, paragraph 2, of the Committee's issuing, through the Secretary-General, informational communiqués regarding its closed meetings, he considered it appropriate that consultations should first be held with the States parties concerned.

11. Sir Vincent EVANS said, with regard to the referral of a dispute to other instances, under article 44, that that article did not expressly prevent the Committee from continuing to concern itself with a matter, even though it had been submitted to another procedure for the solution of disputes. That was why it was necessary to include in the new draft rules of procedure paragraph 2 (g) of rule 73, in which information was requested as to whether the same matter was being examined under another procedure of international investigation or settlement.

12. As to whether or not the State party initiating the procedure provided for in article 41 of the Covenant should be placed under an obligation to transmit a copy of the communication prior to the notification whereby the matter was referred to the Committee under the provisions of article 41, paragraph 1 (b), of the Covenant, he pointed out that in the rules in the informal document under consideration by the Committee no obligation to that effect was imposed, but the possibility was left open for the State party concerned to transmit the communication at the beginning of the six-month period or at any point during that period.

13. With regard to article 76, paragraph 2, he suggested that the first part should be amended to read: "The Committee may, after consultation with the States Parties concerned, issue communiqués through the Secretary-General ...".

14. Mr. GRAEFRATH, referring to the possibility that the States parties might resort to other procedures to settle a dispute, said that it was necessary to distinguish between two entirely different cases. If both parties to the dispute preferred to resort to another procedure, the situation was perfectly clear and it was sufficient merely to inform the Committee of that fact. On the other hand, if only one of the parties to the dispute resorted to another procedure, the Committee should adopt a decision according to the circumstances of each particular case.

15. Mr. TOMUSCHAT said that the existing text of rule 73, paragraph 1, of the informal document before the Committee was difficult to understand. He therefore proposed that it should be amended to read: "A communication which refers a matter to the Committee shall be contained in a notice in accordance with article 41, paragraph 1 (b)."

16. He further pointed out that rule 73, paragraph 2 (a), of that document was unnecessary and should be deleted; and suggested that, in paragraph 2 (g) of that rule the words "to which the State party concerned had resorted" should be added.

17. Mr. HANGA said that the beginning of rule 72 of the informal text should be amended to read "The Secretary-General shall refer to the Committee", which had greater legal force than the existing wording.

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(Mr. Hanga)

18. He further proposed that, in the second sentence of rule 77C, the word "undue" should be replaced by the word "any".

19. With regard to rule 77F, he expressed the view that the reference to article 42 of the Covenant should be given in greater detail.

20. Mr. MOVCHAN said that the Committee should bear in mind two fundamental principles. The first was the need to avoid unnecessary repetition, for which purpose rule 72 of the informal text could be deleted, since it added nothing new to the provisions of rule 75. The second principle was that the rules should follow in logical order, and to that end rule 73, with the amendments to paragraph 1 proposed by Mr. Tomuschat, should appear first. In that connexion, he pointed out that that paragraph, as it stood, could be misleading, and he therefore agreed with Mr. Lallah that the States parties would seek in principle to settle the dispute by friendly means, as provided for in article 41, paragraph 1 (b), of the Covenant; and only if the matter was not settled to their satisfaction would they have the right - and not the obligation - to submit the matter to the Committee.

21. Furthermore, he proposed that rule 75 should follow rule 73, rule 77A should precede rule 76 and rule 74 should become the last of the articles concerning the procedure to be followed for the consideration of communications received under article 41 of the Covenant. Owing to lack of time, he considered that it would be better to conclude the debate on the item and to thank Sir Vincent Evans, as Chairman of the Working Group, who had taken into account the views expressed by the various members of the Committee, so that consideration of the question could be continued at the session to be held at Geneva.

22. Mr. LALLAH supported Mr. Movchan's suggestions, as well as Mr. Tomuschat's proposal relating to rule 73. However, he considered that rule 74, concerning a permanent register of all communications received by the Committee, should be retained in its present place, since the communications sent to the Committee bore the registration number assigned to them by the Secretariat.

23. Mr. TOMUSCHAT pointed out that, since the official proceedings were begun only when the Committee received the notice referred to in article 41, paragraph 1 (b), of the Covenant, the Committee would require rules only for those proceedings. Consequently, since the Committee would not act on the basis of the initial communication, the draft rule 72 could be deleted.

24. Sir Vincent EVANS said that he would have no objection to the deletion of rule 73, paragraph 2 (a), and could accept the amendment proposed by Mr. Tomuschat concerning paragraph 2 (g) of that same rule. On the other hand, he would find it difficult to accept the amendment concerning rule 73, paragraph 1, since the new text seemed to eliminate the difference between the initial communication and the notice to be given to the Committee in pursuance of article 41, paragraph 1 (b), of the Covenant. It was clear from that

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(Sir Vincent Evans)

provision of the Covenant that the procedure would begin with a written communication from one State party to another, but the matter would be referred to the Committee not because of that communication, but because of the notice. In accordance with the wording suggested by Mr. Tomuschat, the communication which would initiate the procedure would be sent six months before the notice by virtue of which the matter would be referred to the Committee.

25. Referring to the proposals put forward by Mr. Hanga, he said that the words "shall bring to the attention of the Committee" in rule 72 of the draft text had no special legal connotation in English to make it preferable to the words "shall refer to the Committee". With regard to rule 77C of the draft text, he had difficulties with the proposed amendment, since in his view it was impossible to avoid delay entirely. He therefore felt that the existing wording should be retained. As for rule 77F, he was not convinced of the need to reword the text in greater detail.

26. With regard to the question of the logical order of the rules, he felt that it might be better to delete rule 72 and to begin with rule 77A.

27. Mr. TARNOPOLSKY agreed with the deletion of rule 72, and the placing of rule 77A first, followed by rule 76. He also emphasized that the Committee should concern itself not with the communications but with the matters which gave rise to them, and that rule 73, paragraph 1, of the draft text should therefore be amended to read "A matter to which a communication under article 41 relates may be referred to the Committee by either State party concerned by giving notice in accordance with article 41, paragraph 1 (b), of the Covenant".

28. Mr. Mavrommatis took the Chair.

29. Mr. MOVCHAN, Mr. LALLAH, Sir Vincent EVANS, Mr. HANGA, Mr. DIEYE and the CHAIRMAN thanked Mr. Mazaud, representative of the Secretary-General, for the invaluable services rendered to the Committee.

30. After an exchange of courtesies, the Chairman declared that the Human Rights Committee had concluded the work of its sixth session.

The meeting rose at 12.50 p.m.