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Second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*/ OF THE 42ND MEETING

held at the Palais des Nations, Geneva,
on Friday 26 August 1977, at 3.25 p.m.

Chairman: Mr. LALLAH

Later: Mr. MAVROMMATIS

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MEETINGS OF THE COMMITTEE IN 1978 AND 1979 (agenda item 5, formerly item 6)

1. Mr. COURTOIS (Chief, Conference Division) explained that, in spite of the difficulties involved, including the refurbishing of conference rooms at United Nations Headquarters, the Division had attempted to satisfy the needs of the Committee with respect to meeting dates. He had informed the Director of the Division of Human Rights that the following dates and venues were available: the third session could be held between 16 January and 3 February 1978 at Geneva although there was still a slight possibility of holding it in New York, the fourth session could be held from 10 to 28 July in either New York or Geneva, and the fifth session could be held on any dates chosen by the Committee between 10 July and 22 December 1978.

2. The CHAIRMAN said that decisions could be made at the following meeting.

3. Mr. GANJI said that the Commission on Human Rights had for some time questioned the appropriateness of meeting only at Geneva and New York when human rights questions concerned the whole world. It might be advantageous for meetings on such questions to be held in a different environment where members of the organ concerned would experience the realities of life in other places. As far as the Committee was concerned, there was still a possibility of holding meetings at the headquarters of regional economic commissions where conference facilities already existed. As more than twenty of the States which had ratified the Covenant were from Africa, Asia and Latin America, the Committee might explore the possibility of meeting in rotation in different parts of the world. That might also mobilize local opinion in favour of ratification of the Covenant. The Committee should break with the tradition of meeting only at Geneva and New York, particularly as sessions at the headquarters of the regional commissions would entail no extra expense. He hoped that the Committee would consider that possibility for its meetings after 1979.

4. Mr. COURTOIS replied that meetings were usually held in New York and Geneva and, after 1979, could be held at Vienna, in pursuance of a General Assembly decision based on the report of the Committee on Conferences. Other venues could be arranged, for example, when a government offered to act as host to a meeting and bear the extra expenditure entailed in holding the meeting away from the base of the organ concerned.

5. Mr. GANJI explained that there were two possibilities envisaged in his proposal, first that a government might offer to act as host and, secondly, that meetings might be held at the headquarters of the economic commissions where conference services were already available and extra expenditure would be limited to the travel costs of staff of the Division of Human Rights.

6. Mr. COURTOIS pointed out that, although equipped conference rooms existed at various small duty stations, conference staff had to be recruited specially and that had considerable financial implications. The Committee could, of course, request that the meetings be held at other places, but must bear in mind the important matter of extra expenditure.

7. The CHAIRMAN thanked Mr. Courtois for his information and requested him to apprise the Committee of the final information when it was received from New York.

OTHER MATTERS (agenda item 6, formerly item 7)

8. Mr. OPSAHL presented his ideas on the working methods which the Committee should adopt in the light of its experience, including the use of summary records. It was important to decide how the Committee should deal with communications submitted under the Optional Protocol and to assess the practical implications for the Committee, its working groups and the Secretariat of the rules of procedure adopted and the first examinations which had taken place in closed session.

9. Between the end of the present session and the beginning of the next, it was essential that the work of the Committee should not come to a standstill through ignorance of the appropriate procedure. The Committee's chief concern should be the procedures for determining the admissibility of communications in accordance with rules 87-92 of the rules of procedure as adopted. Further action warranted by the merits of the cases themselves could be considered later, but the Secretariat must have some concrete information on which it could take preliminary action - and which should be reflected in the summary records and perhaps even in the annual report of the Committee - until the Committee gave other instructions.

10. Although communications would be dealt with in closed session, the actual procedures involved should be made known through publicity and well-publicized advice to those who wished to avail themselves of those procedures. The Committee could elaborate guidelines for potential petitioners in the form of a model petition or instructions. In any case, rule 80, paragraph 3, provided that "The Committee may approve a questionnaire for the purpose of requesting ... information from the author of the communication". That would be addressed to an individual who had already communicated with the Committee or with the Secretary-General, but wider dissemination of information was also very important. He hoped that before the next session the Secretariat would submit such guidelines for the Committee's approval.

11. Communication was fraught with practical problems. He did not think it was proper for members of the Committee to serve as channels of communication to the Committee. Committee members might even find that they had to protect themselves against access. Communication through Governments or United Nations missions might not always be in the interests of the author. Therefore access to the Committee must normally be through the Secretary-General or the Secretariat and the Committee must ensure that it received communications intended for it. Over the years, it had become a practice for people to appeal to the United Nations and steps must be taken to enable the Secretariat to distinguish, even when a communication was not addressed to the Human Rights Committee, between an author who was entitled to contact the Committee and one who was not. In practice, the Secretariat must acknowledge communications to the Committee and, in doing so, act as the secretariat of the Committee by informing the author of his right to communicate with the Committee. It should therefore show a tolerant attitude and assist those who seemed helpless, as distinct from those whose case was hopeless.

12. The rules of procedure, more particularly rule 90, paragraph 1 (b), dealt with the various types of communications that could be considered by the Committee. There were, however, other less clear-cut categories of communications - for example, those from individuals who did not indicate any relationship with the alleged victim, those from groups acting on behalf of or representing alleged victims, or those from groups which simply pointed to alleged violations. In such cases, the Secretariat should give an informative reply about the possibility of dealing with the case under the Optional Protocol, provided of course that the case related to a State which had agreed to be bound by the Protocol. Again, under rule 80 the Secretariat should proceed to clarify whether an individual was purporting to act on his own behalf and also on behalf of other named or unnamed persons. Such matters should be settled before a communication was brought to the attention of the Committee. If the Secretariat did not obtain the necessary clarification in advance, the Working Group could, under rule 91, request it to do so.

13. Obviously, individuals could not all be expected to submit their communications in one of the official languages of the United Nations. It should also be possible to take action on a case before the communication in question was translated. In that instance, it would be enough for the Secretariat to supply a fact sheet in the working languages and, where necessary, the communication could be examined in the original language with the assistance of a translator. Moreover, many individuals would experience difficulties if the Secretariat was not allowed to provide replies in languages other than the official languages of the Organization.

14. In the matter of assistance to authors, a standard procedure should be adopted to indicate that the Committee could consider only communications relating to violations of human rights which had occurred on or after the date of entry into force of the Covenant and the Optional Protocol for the State in question, unless violations alleged to have occurred before that date could be viewed as of a continuing character or having effects which in themselves might constitute a violation occurring after that date. Similarly, if a communication appeared to refer to more than one alleged victim, instructions should be given to the author to submit a list of the persons on whose behalf he or she was submitting the communication.

15. Following that important stage of preparation of communications by the Secretary-General, it would also be of great assistance to the Committee, during its sessions, if a case file was kept readily accessible in the conference chamber, in the care of a member of the Secretariat who was fully conversant with the file and with the case that was being considered. In addition, if a communication containing detailed allegations of an urgent nature was received while the Committee was in session, it should be acted upon immediately, without waiting for the communication to be translated into the working languages. Rule 88 did not specify that communications had to be considered in their order of receipt and such flexibility would certainly be in keeping with the spirit of rule 86.

16. The author of a communication to the Committee might well decide to publicize his or her allegations in an effort to secure the support of world opinion. If the allegation was the same in substance as that being considered by the Committee,

the author should not be regarded as having committed a breach of confidentiality, but it was clear that the Committee itself could not make information on the case available to the public or instruct the Secretariat to do so. Under the rules of procedure, decisions on admissibility could be taken at closed meetings and communicated to the individual and, if necessary, to the State concerned. However, the question arose as to whether such decisions should be a simple "yes" or "no", or more elaborate in character, with suggested or implied interpretations of the Covenant. It would be advisable to set out the decisions in a standard form and to take them at public meetings so that they could be studied by individuals or groups wishing to co-operate with the Committee or address themselves to it.

17. Inevitably, the first task would be to determine the admissibility of a communication. It was essential to refrain from adopting too legalistic an approach and to avoid developing a hierarchy of reasons for rejecting the communication as inadmissible. Thought would also have to be given to the question of compatibility, which was referred to in article 3 of the Optional Protocol. Allegations would frequently be made in such terms that the Committee would experience doubt as to the applicability of the Covenant and the Optional Protocol, especially when the author did not invoke any particular provision thereof. It would be too easy for the Committee to resort to such a formulation as "This right is not as such protected by the Covenant". Very often, the facts of the case would have to be considered by the members ex officio in order to determine whether or not the provisions of the Covenant or the Optional Protocol were applicable. For instance, the Committee could not simply assert that corporal punishment was not prohibited under the Covenant. It would be necessary to ascertain whether corporal punishment, as alleged in a particular case, might not involve inhuman or degrading treatment. He had experience of another system for dealing with allegations of violations of rights in which the body concerned tended to declare communications inadmissible by stating that the author's claims, as described by him or her, did not fall under the terms of the relevant instrument.

18. The Optional Protocol did not incorporate any provision to the effect that a claim was inadmissible because it was manifestly unfounded. Consequently, the Committee would have to deal with communications on the assumption that the allegations contained therein were true, even if they were not substantiated. If a case, in terms of the facts alleged, did fall within the provisions of the Optional Protocol, it was prima facie admissible.

Mr. Mavrommatis took the Chair.

19. Mr. LALLAH said that Mr. Opsahl had raised a number of important matters that had to be dealt with at the present session.

20. It was true that, at the present time, the States parties to the Optional Protocol were few in number, but they nonetheless represented a large proportion of the world's population and of the potential victims of violations of human rights. Rule 80 of the rules of procedure, concerning requests by the Secretary-General for clarification from the authors of communications, was quite comprehensive. However, there was also the problem of those individuals who were unacquainted with the procedure for sending communications to the Committee and indeed of those individuals who were not aware of their right to submit communications. Neither the Covenant nor the Optional Protocol required States parties to publicize the provisions of those instruments and the United Nations

had neither been instructed nor taken steps to give them publicity throughout the world. The Committee itself did not have the financial resources for such a task, but additional guidelines could be drawn up for individuals who wished to submit complaints. Such guidelines could be considered by the Working Group that was to meet before the next session of the Committee.

21. Again, it should be possible to acquaint voluntary organizations with the work of the Committee. It was not his intention to suggest that the Committee should use those organizations as agencies, but a means should be found to ensure that they were kept informed of the Committee's decisions. In that way, the Committee's jurisprudence would become accessible to the public. Article 5, paragraph 3, of the Optional Protocol simply stated that the Committee should hold closed meetings when examining communications. Neither the Covenant nor the Optional Protocol contained a provision that prevented the Committee from publicizing its decisions, but it should not, of course, disclose the names of the victims or the State concerned.

22. On the other important question relating to confidentiality raised by Mr. Opsahl, he too believed that an author of a communication to the Committee was at liberty to publicize the fact. The only rule concerning confidentiality enjoined on the Committee was the confidentiality of its consideration of communications from individuals or States. Situations would arise in which allegations against a State proved to be unfounded. Obviously the Committee would not take offence if the State in question pointed out that it had been wrongly accused. The decision to publicize a communication to the Committee lay solely with the author of the communication.

23. It was gratifying to note from the summary records of the previous session that the Committee had adopted a liberal attitude towards the question of the languages in which communications were submitted. Clearly, it was the duty of the Committee to receive communications and, where necessary, they would have to be translated into the working languages.

24. The question of equality of treatment for the State and the individual also arose. A communication received from a State would be translated into all the official working languages and circulated in them. There was no indication anywhere in the rules of procedure that the same treatment would not be given to the individual petitioner when he replied, but the Secretariat would have to take into account the funds that were available. When the stage was reached at which the Committee had to consider a communication, it should have all the material that could possibly be made available, but the rules of procedure referred only to written information and observations.

25. In the course of the present session, he had been obliged to report orally to the Committee on the deliberations of the Working Group. It was obviously essential that the Working Group should be afforded full facilities regarding documentation, which meant that the Secretariat must have not only the necessary incontrovertible material but also the time to prepare and arrange for the translation of documents of the Working Group, for distribution to the Committee. Consideration would therefore have to be given to the question of any extra

manpower requirements of the Secretariat. Without full documentation, the work of the Working Group, which he hoped would be able to meet in between the Committee's sessions, would lose a great deal of its impact.

26. On all the other issues raised by Mr. Opsahl he was in full agreement.

27. Mr. GANJI said that the points raised by Mr. Opsahl were extremely interesting and in general he agreed with what he had said. As far as the availability of the Committee's jurisprudence was concerned, guidelines for potential petitioners should make it quite clear, when the alleged victim was not able to communicate with the Committee, whether his relatives or others could do so on his behalf. The question of translation was also extremely important.

28. Although he agreed with what Mr. Opsahl and Mr. Lallah had said on the question of confidentiality, the whole subject was so important that it could not be dismissed simply by saying that the Committee's jurisprudence should be made public and that, if a petitioner made public the fact that he had been in communication with the Committee, it would be no violation of the rule of confidentiality. So far, only 16 States had become parties to the Protocol and only six States had accepted article 41 of the Covenant itself. The Committee had to act in a way which would ensure that more States became parties to the Protocol by inspiring confidence in its work. States should be convinced that the Committee was not politically motivated and that unfounded reproaches to Governments would not occur. That was why he felt very strongly that the rule of confidentiality should at the present juncture be approached in a restrictive rather than a liberal manner. Any State could denounce the Protocol by giving three months notice. Therefore, nothing should be done which indicated that a State might have acted contrary to the Protocol until it had been established that an infraction had occurred. Undue publicity would not be in the interests of the petitioner either. It was essential, therefore, to comply with the rule of confidentiality and to make the petitioner aware that it was not in his best interests to publicize the fact that he had communicated with the Committee while his case was under consideration.

29. The question of the assistance which the Secretariat could give the Committee would become increasingly important as its activities developed. The Sub-Commission on the Prevention of Discrimination had had to deal with 18,640 communications concerning violations of human rights in 1976. The resources of the Committee's secretariat, both financial and in terms of manpower, would obviously need to be increased. Otherwise, the Committee itself would not be able to function as it should. Should the Committee appeal to the General Assembly and through it to States parties to ensure that its secretariat was provided with the necessary resources?

30. Mr. ESPERSEN said that he agreed with the three members of the Committee who had spoken before him.

31. He thought, however, that the most important point had just been made by Mr. Ganji. Both the Covenant and the Protocol were excellent, but the size of the secretariat of the Division of Human Rights had not changed over the years. The Committee could not carry out its task unless the staff assisting it were increased. The stage which preceded the consideration by the Committee of a petition was extremely important. He understood that at present the individual concerned did not even receive an acknowledgement of his appeal for several months; then the acknowledgement and the annexed Covenant and Protocol could be in a language which he did not understand. As far as possible, the Committee should obviously try to communicate with a petitioner in a language which he could understand. He felt sure that all States which had ratified the Covenants and the Protocol would have made translations of them for their own use. He suggested that the Secretariat should try to obtain copies of them, so that the documents accompanying the letter to the petitioner could be in his own language.

32. One of the purposes of the present discussion was to enable the members of the Committee to make known their views to their colleagues and the Secretariat. He hoped that before the next session it would be possible for the Secretariat to study the various suggestions made, indicating what additional facilities it would require to implement them. Some of the suggestions could perhaps be acted upon before the next session.

33. The CHAIRMAN observed that the Secretariat might have its own ideas of the way in which the Committee's work would develop and the help which it could provide.

34. Mr. TOMUSCHAT said that he would not dwell on the language question, as it had already been dealt with exhaustively. He had some points, however, to make in connexion with the question of publicity given to the Committee's decisions. The starting point was article 5, paragraph 4 of the Protocol: there could not be absolute confidentiality, since the individual had the right to make known to the public what kind of decision or views the Committee had communicated to him. In his view, it was a question not of law but of legal policy whether the Committee itself should also make known to the public the decisions and views which it transmitted to States. He questioned whether it was in the interest of the Covenant and the promotion of human rights not to publish a collection of the Committee's decisions and views. He thought that perhaps a false picture could be created if the Committee did not publish regularly at least the views it had on the merits of the cases submitted to it. The Committee had to accept the fact that individuals and States would make known the decisions which were in their favour. That would provide a rather fragmentary or even distorted picture of the Committee's activities. There was great need for objectivity and that could only be attained through the official publication of the Committee's views. Perhaps it would be wise not to include decisions on admissibility in such a collection of decisions.

35. While a case was still before the Committee, nothing should be made known to the outside world, but once the Committee had reached its final conclusions, the public had the right to know what they were; it would then know what the Committee was really doing. How could States gain confidence in the Committee if they were not able to learn how it coped with the problems with which it had to deal? They would obviously be anxious to find out how the Committee interpreted the Covenants and Protocol in practice. That was why he felt that the Committee should take the courageous decision to institute an official collection of decisions, which would also have to include a summary of the facts of the cases in question.

36. Mr. GANJI said that he agreed with what Mr. Tomuschat had just said about publicity. The Committee's decisions should certainly be made public, but no information should be made available to the public during the stage of its deliberations when it was reaching those decisions. The principle of confidentiality had to apply to that stage of the proceedings.

37. Mr. PRADO-VALLEJO said that information about the Covenant and its provisions should be brought to the attention of the public in all countries. Perhaps the Secretariat could suggest ways and means of publicizing the Covenant. A point to be borne in mind in that connexion was that in many countries large sectors of the population were illiterate; steps must be taken to ensure that individuals in those sectors whose rights were violated were aware of the remedies available to them under the Covenant and the Protocol. He agreed with Mr. Ganji that the Committee should acquire a reputation of being effective. One means of achieving such a reputation might be to publish the results of cases whenever that was possible. A reputation for effectiveness would also be established if the Committee dealt expeditiously with communications. He considered, in that connexion, that less time should be spent on discussing the form of communications and more on their substance.

38. It was important that a greater number of States should ratify the Covenant. Perhaps an appeal to that end should be made through the General Assembly.

39. Consideration should be given to the idea that sometime in the future it might be necessary for the Committee, through a working group, to have direct, not merely documentary, contact with individuals submitting communications.

40. He agreed with those speakers who had said that guidelines on the preparation and submission of communications should be issued. The calendar of the Committee's meetings should also be made public in order to enable individuals to submit their communications in good time.

41. In conclusion, he suggested that the Committee should not restrict its activities through fear that they might lead countries to denounce the Protocol; if a country denounced the Protocol without very good reason its prestige would suffer.

42. Sir Vincent EVANS, observing that previous speakers had referred to the need to publicize the Covenant, said that the provisions of General Assembly resolution 2200 B (XXI) were still in force. In that resolution the General Assembly had recognized that the provisions of the Covenant and

Optional Protocol should be made known throughout the world, had requested Governments and non-governmental organizations to publicize the text of the instruments as widely as possible and requested the Secretary-General to ensure the immediate and wide circulation of the instruments and to publish and distribute the text thereof. He suggested that Governments and non-governmental organizations should be reminded of the provisions of General Assembly resolution 2200 B (XXI).

43. As Mr. Ganji had stated, it was vitally important to build up confidence in the Committee. In that connexion, he considered that it would be a mistake to think or speak in terms of a liberal or restrictive interpretation of the Covenant or Protocol. Each communication should be considered on its own merits. Adoption of a general policy of a liberal or restrictive character could result in distorted and unsatisfactory examination of a particular communication.

44. Mr. SANON (Deputy Director, Division of Human Rights), commenting on the points made by the members of the Committee, said that, in anticipation of the entry into force of the Covenant, the Division of Human Rights had, when submitting its budget for the 1976/1977 biennium, requested that provision be made for three additional professional officers and two secretaries to service the Committee. On the grounds that the volume of the Committee's work did not justify such an increase, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had recommended the addition of only a professional officer and one secretary. In June 1977, the Division, when submitting its estimates for the 1978/1979 biennium had requested two additional professional officers and one secretary. It appeared that it would again be granted only one additional professional officer and one secretary; even then the Division's budget - which, according to a recent general directive should not increase by more than 2 per cent in the 1978/1979 biennium - would increase by 2.4 per cent. The team to service the Committee would, therefore, consist of a maximum of two professional officers and two secretaries. Clearly, with such a small staff, the Division would be unable to cope with all the work it was required to perform, in connexion not only with the Covenant on Civil and Political Rights, but with other covenants and conventions as well. The Division needed three professional officers to deal exclusively with the Committee's work. He suggested that members should consider the possibility of exerting pressure on their Governments to remedy the situation and to support the Division's case in the Fifth Committee of the General Assembly.

45. Referring to the suggestion that individuals should be allowed to submit communications in their own language and that communications should be acknowledged in the language in which they had been submitted, if possible within ten days of receipt, he said that the Languages Division was not equipped to comply with that suggestion; it would, for example, be difficult to deal with communications submitted in, say, Malagasy. He noted, in that connexion, that adoption of Mr. Espersen's suggestion that Governments be requested to send the Secretariat copies of their language version of the Covenant and Protocol would be most helpful. The Division dealt with communications as expeditiously as possible; members must bear in mind, however, that communications were also submitted under other conventions and resolutions and that there was only one under-staffed unit to deal with approximately 200 communications a day.

46. Turning to the question of publicity, he said that the Office of Public Information (OPI) had made strenuous efforts to publicize the Covenants; 10,000 copies of the Covenants had been produced in French, 35,000 in English and 10,000 in Spanish. As soon as that initial stock had been exhausted, further copies would be produced and circulated.

47. The question of honoraria had not been raised, but he felt that he owed members an explanation of the situation in that respect. In its budget for the 1978/1979 biennium, the Division had included a sum to cover experts' emoluments. The agenda of the General Assembly in 1976 had included an item on reconsideration of problems pertaining to honoraria for United Nations organs. Unfortunately, the Assembly had postponed its decision on that item until the thirty-second session. Consequently, ACABQ had deducted from the Division's budget the sum of $39,000 that had been allocated under that head. As soon as the General Assembly had taken a decision on the matter, an appropriate amount would be reinserted in the Division's budget.

48. Mr. GANJI suggested that the Committee's report should include a paragraph recommending that the Secretariat be granted the staff and finance it needed to provide the necessary services to the Committee.

49. The CHAIRMAN said that the Officers of the Committee had already requested the Rapporteur to include a paragraph to that effect in the report.

The public meeting rose at 5.45 p.m.