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ON CIVIL AND
POLITICAL RIGHTS**



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First session

SUMMARY RECORD OF THE 11th MEETING

Held at Headquarters, New York,
on Monday, 28 March 1977, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 3.20 p.m.

ORGANIZATION OF WORK

1. The CHAIRMAN said that, in addition to completing its consideration of the preliminary draft provisional rules of procedure, the Committee had to consider the question of the form of its summary records. The Committee should also hold an exchange of views on agenda item 7 and should try to formulate provisional guidelines relating to the consideration of reports by States Parties and communications received in accordance with the provisions of the Optional Protocol. It should also try to decide on the organization of the work of its next session, since it was necessary to give Governments some indication of when their reports would be considered by the Committee. With regard to the annual report of the Committee, he would shortly be meeting with the President of the Economic and Social Council and would inform the Committee of the results of the discussions which took place.
2. Mr. OPSAHL said that the Committee should also consider to what extent States Parties had already submitted reports and whether reminders should be issued to those which had failed to do so. There was also a proposal pending relating to possible derogations from the rules of procedure.
3. Mr. GANJI said that the proposal to which Mr. Opsahl had referred was that the Committee should adopt a rule similar to rule 77 of the rules of procedure of functional commissions of the Economic and Social Council.
4. Sir Vincent EVANS said that the Committee should endeavour to complete its work on the rules of procedure by the following day in order to leave time for the consideration of other agenda items. It would be helpful to have some indication of the dates of the second session of the Committee, since the organization of the work of that session would depend on when it took place. The Committee had also been informed that the Legal Counsel might wish to express his views on a number of matters relating to the rules of procedure and he should be invited to do so at the earliest possible date in order to facilitate the completion by the Committee of its consideration of that item. Finally, he believed that agreement could be reached quickly with regard to the summary records of the Committee's meetings.
5. Mr. TOMUSCHAT suggested that the Legal Counsel should be invited to address the Committee the following day, since otherwise it would not be able to take a final decision on those rules which related to the taking of decisions.
6. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished the Secretariat to invite the Legal Counsel to speak at the next meeting of the Committee.
7. It was so decided.

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

Rule 79

8. Mr. MORA ROJAS said that the first sentence of paragraph 2 seemed to be in contradiction with the provisions of paragraph 1. If a communication appeared to be submitted for consideration by the Committee under the Protocol, he saw no necessity for the Secretary-General to request clarification from the author of the communication as to his intention.
9. Mr. TOMUSCHAT said that it was not necessary to bring to the attention of the Committee communications that concerned States which had not ratified the Optional Protocol and that it might be useful to include in rule 79 specific provisions relating to that category of communications.
10. Mr. ESPERSEN observed that provisions such as those just suggested by Mr. Tomuschat might be superfluous since the title of section XVII of the preliminary draft provisional rules of procedure already specified that the procedure laid down therein related to the consideration of communications received under the Optional Protocol.
11. With regard to the remarks made by Mr. Mora Rojas, he suggested that the words "are or" might be added after the word "which" in paragraph 1 in order to cover cases in which it was not clear whether a communication was intended as a formal complaint.
12. Mr. GRAEFRATH suggested that paragraph 1 should be amended to read: "The Secretary-General shall bring to the attention of the Committee, in accordance with the Protocol and the present rules, ...". It would then be clear that only communications concerning States which had ratified the Protocol were intended.
13. Mr. OPSAHL pointed out that communications might be received concerning States which had not yet ratified the Protocol but which might do so in the near future. It might be desirable, therefore, to establish a provisional file of such communications which could be brought to the attention of the Committee after the State concerned ratified the Protocol.
14. Sir Vincent EVANS said that when a communication was received by the Secretary-General under the Protocol, it was the task of the Committee to determine whether the communication in question was admissible. Thus, the position of the words "under the Protocol" in paragraph 1 was significant. If the amendment suggested by Mr. Graefrath was adopted, the text would give the erroneous impression that only admissible communications were to be brought to the attention of the Committee.
15. Mr. MOVCHAN said that it was for the Committee itself to decide whether a communication was admissible or not. The Secretary-General should bring to the attention of the Committee communications received in accordance with the Protocol and not in accordance with the rules of procedure.

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16. Mr. ESPERSEN said that he interpreted rule 79 as meaning that the Secretary-General would bring to the attention of the Committee all communications received under the Protocol but that he was empowered to request certain clarifications with a view to assisting both the authors of communications and the Committee. There was good reason to mention both the rules of procedure and the Protocol in rule 79.

17. Mr. URIBE VARGAS said that the Committee could not transfer its power to decide on the admissibility of each communication to any other person or body and that greater emphasis should be placed on that fact in paragraph 2.

18. Mr. MORA ROJAS observed that rules 79 and 80 taken together satisfactorily resolved the problems relating to the procedure for bringing communications to the attention of the Committee. Rule 80 clearly provided that a list of all communications received would be circulated to the members of the Committee. He proposed, however, that in the Spanish version of rule 79, paragraph 1, the word "manifiestamente" should be replaced by the words "clara y expresamente".

19. Mr. PRADO VALLEJO said that rule 79, paragraph 1, as it stood, gave the impression that the Secretary-General had the power to determine whether a communication should be submitted for consideration by the Committee. That was not the case; the Secretary-General had an obligation to transmit to the Committee all communications submitted under the Protocol. There was no doubt that it was for the Committee to decide whether or not a communication was admissible. The function of the Secretary-General was purely administrative and that fact should be emphasized in rule 79. He therefore proposed that paragraph 1 should be amended to read: "The Secretary-General shall bring to the attention of the Committee, in accordance with the Protocol and the present rules, communications which he has received".

20. Mr. ESPERSEN said that rule 79 was intended to cover two kinds of communications, namely, those which were clearly intended to be submitted for consideration by the Committee and those with regard to which there was some doubt as to the author's intention. When communications were received, some discretion must be exercised in determining the intention of the author. Rule 79, paragraph 2, had been included in order to clarify the task of the Secretary-General. Accordingly, he considered the current wording of rule 79 to be generally acceptable. Even in cases where the Secretary-General decided that the author of a communication had not intended to submit it for consideration by the Committee, the Committee would be informed of the existence of the communication in question. Thus, the Committee was assigning an administrative task to the Secretary-General.

21. Mr. OPSAHL said that the Committee had a right to unrestricted access to all communications and that not even a preliminary screening procedure should interfere with that right. It was important to emphasize that principle in rule 79 in view of the very real possibility that States might attempt to interfere with communications sent under the Protocol.

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22. Mr. TOMUSCHAT said that the Secretary-General had only one point to determine, and that was whether or not a communication concerned a State which had ratified the Optional Protocol. The amendment proposed by Mr. Mora Rojas would therefore be somewhat misleading since the inclusion in the Spanish text of the word "expresamente" was tantamount to requiring that petitioners refer expressly in their communications to the Optional Protocol. That was an unreasonable expectation and the word "claramente" would seem sufficient.

23. Mr. MORA ROJAS agreed with the observation made by Mr. Tomuschat and modified his own proposal accordingly.

24. Mr. LALLAH said that the entire section dealing with the consideration of communications required a cautious approach and that the rules of procedure should be regarded as provisional until the Committee had gained more experience and more countries had ratified the Optional Protocol.

25. He agreed that there was a real problem that individuals might not have a clear idea of the provisions of the Covenant and the Optional Protocol and that they might not have access to expert legal advice. For that reason, rule 79 should be flexible so that the Secretariat could bring to the attention of the Committee various sorts of communications which might not be addressed directly to the Committee. In that connexion, it would be helpful if the Secretariat could act as a legal registry and had certain basic powers and if it could use its common sense to elicit further information and bring matters to the attention of the Committee. It was also important to keep procedures as simple as possible.

26. Sir Vincent EVANS agreed with Mr. Lallah. It was important that individuals should not be penalized because they did not comply with or appear to be familiar with the provisions of the Optional Protocol. For that reason, the wording of paragraph 1 might be too restrictive, in that it implied that the individual submitting the complaint was aware of the Optional Protocol and the Covenant and had the intention of bringing his communication to the specific attention of the Committee.

27. Mr. GRAEFRATH thought that there was general agreement in the Committee that the Secretary-General should be required only to check whether the communication came from an individual whose State had ratified the Optional Protocol. If the intention of the individual was clear, the communication should then be transmitted to the Committee. He suggested the following wording for rule 79:

"1. In accordance with article 1 of the Optional Protocol, the Secretary-General shall bring to the attention of the Committee communications which are to be submitted for consideration by the Committee.

"2. The Secretary-General, when necessary, may request clarification from the author as to his intention. In case doubts remain as to the intention of the author, the Committee will be seized of the communication."

28. Mr. PRADO VALLEJO had some doubts as to the validity of rule 79, paragraph 2.

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(Mr. Prado Vallejo)

Common sense would indicate that, if an individual had sent a communication to the Secretary-General, it was obvious that he wished the communication to be transmitted to the Committee. As the rule now stood, the only way in which a communication which was in keeping with the provisions of the Optional Protocol would not reach the Committee was if the author had expressly so requested. Perhaps it would be better if the rule simply stated that all communications which were submitted in accordance with the Optional Protocol should be forwarded to the Committee and the Committee would itself decide on their admissibility.

29. Mr. HANGA felt that the present text was essentially the correct one. All members of the Committee seemed to agree that the Secretary-General must decide whether a given communication fulfilled the procedural requirements and that the Committee should then decide on the matters of substance involved.

30. Mr. ESPERSEN said it was important to remember that it was not to be expected that an individual using the Optional Protocol procedure would have a legal education or make reference to the Optional Protocol. A solution might be to use the wording of article 1 of the Optional Protocol in formulating rule 79. If an individual wrote to the Secretary-General, or to the United Nations in general, alleging a violation of any right recognized by the Covenant, his communication should be submitted to the Committee without reservation. No reference to the Covenant, the Optional Protocol or the procedures required should be necessary.

31. He proposed the following text for rule 79:

"The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications which refer to alleged violations of rights set forth in the Covenant."

There was, in his view, no need for paragraph 2. The Committee should be able to consider a communication if the petitioner claimed that a right had been violated. The fact of communicating was sufficient evidence of the intention of the individual petitioner.

32. Mr. MAZAUD (Deputy Director, Division of Human Rights) said that, in preparing the preliminary draft provisional rules of procedure, the Secretariat had wished to distinguish between the administrative function of the Secretary-General and the legal competence of the Committee, which had to make the decision as to what should be done about a given communication. It was for the Committee to decide on the admissibility of communications and the Secretary-General did not wish to become involved in a decision on that question. The rules had been formulated so as to allow the Secretary-General to transmit all communications which seemed intended for the Committee's consideration and to exclude certain others. The latter would include those in which the petitioner might mention the Optional Protocol or the Committee but not himself be under the jurisdiction of a State Party to the Optional Protocol, or communications from persons who mentioned the Optional Protocol or the Committee together with other procedures, such as procedures under resolution 1503 (XLVIII) of the Economic and Social Council or the ILO procedures with regard to freedom of association. In such cases, it was important to clarify which particular procedure the petitioner had in mind for his communication.

33. He noted that rules 80 and 81, which were closely linked to rule 79, added another task for the Secretary-General, namely that of soliciting certain information which would help the Committee in its decision regarding the admissibility of a given communication.

34. The CHAIRMAN said that the Committee seemed to be experiencing some difficulty in deciding on rule 79, probably owing to the lack of concrete examples. The Committee did not yet know in what form communications would be sent or formulated and he felt it would be useful to remember that the rules of procedure could be revised when the Committee had gained more experience.

35. Mr. MORA ROJAS felt that rules 79 and 80 taken together seemed to solve the problem. Rule 79 established a system whereby the Committee received all communications other than those where the petitioner specified that he did not wish the Committee to receive his communication. He felt, furthermore, that the machinery established facilitated the administrative procedures and guaranteed that individuals would be heard if they wished.

36. Mr. OPSAHL agreed with Mr. Mora Rojas and felt that all that was needed was to decide on practical methods of work before the registration of communications. There was, unfortunately, a rather delicate stage of the procedure before the registration which would have to remain in the hands of the Secretary-General. He suggested that form letters and other sorts of notices to petitioners offering assistance from the Secretary-General might be valuable. Furthermore, the Optional Protocol specified that anonymous letters could not be received; such letters could therefore not even be registered.

37. The CHAIRMAN hoped that the Committee could agree on a formula which would make the Committee responsible for decisions concerning the receivability of communications when such decisions required the exercise of discretion, since it was clear that the Secretary-General did not wish to bear that burden.

38. Sir Vincent EVANS felt that in both sentences of paragraph 2, the word "intention" should be replaced by the word "wish".

39. Mr. TOMUSCHAT proposed the following text for paragraph 1:

"The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications alleging a violation of any of the rights set forth in the Covenant and which therefore appear to be submitted for consideration by the Committee under the Optional Protocol."

He felt that it was necessary to establish the general presumption that any communication alleging a violation should be submitted to the Committee.

40. Mr. BEN-FADHEL proposed a shorter text:

"The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications which he has received and prepared for consideration by the Committee under the Protocol."

41. Mr. MOVCHAN noted that the Secretary-General received many communications from individuals and he had to select and route them, some to the Committee on the Elimination of Racial Discrimination, others to be processed under procedures provided for in Economic and Social Council resolution 1503 (XLVIII), others to the Human Rights Committee and so forth.

42. Rule 79 gave the Secretary-General the specific task of establishing the intention of the petitioner as to whether his communication was to be considered in accordance with article 1 of the Optional Protocol. It was important to remember that article 1 of the Optional Protocol provided the guidelines for rule 79 and they should not be exceeded. In that connexion, he proposed the adoption of the rule as it stood with the addition, in both paragraphs 1 and 2, of the words "under article 1 of the Optional Protocol".

43. Rules 80 and 81 requested the Secretary-General to obtain additional information which the Committee required for consideration under article 3 of the Optional Protocol. The Secretary-General should not be given the Committee's job, set forth in rule 88, of deciding on the admissibility of communications in accordance with article 3 of the Optional Protocol.

44. Sir Vincent EVANS noted that Mr. Movchan's proposal would lead to some difficulties for the Secretary-General. In particular, article 1 of the Optional Protocol made reference to communications from individuals subject to the jurisdiction of a State Party to the Covenant; that involved a difficult legal question which the Committee, and not the Secretary-General, should decide. For that reason, he felt that paragraph 1 should avoid making an unqualified reference to article 1 of the Optional Protocol.

45. He proposed the following wording for paragraph 1:

"The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, any communication from an individual who claims or appears to claim to be a victim of a violation by any State Party to the Optional Protocol of any of the rights set forth in the Covenant."

His proposal would, in his view, give the Secretary-General the latitude to forward a communication when it was not clear from that communication whether a violation was actually being claimed or only appeared to be claimed. Paragraph 2 would stand, with the change he had proposed, namely that the word "intention" should be replaced by the word "wish" in both sentences.

46. Mr. MOVCHAN did not understand how the nearly verbatim repetition, in Sir Vincent Evans' proposal, of the wording of article 1 of the Optional Protocol would help the Secretary-General to make the decision involved. He felt that a specific reference to article 1 would give the Secretary-General the instructions he required to determine whether a communication should be transmitted to the Committee.

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47. Sir Vincent EVANS said that his proposal departed from the terms of article 1 of the Optional Protocol in two important respects, so as to avoid creating unnecessary difficulties for the Secretary-General. Firstly, as he had mentioned previously, the wording "individuals subject to its jurisdiction" should be left out of the rule, so that the Secretary-General would not have to decide the possibly difficult legal question which it raised. Secondly, article 1 referred to individuals "who claim to be victims of a violation", whereas his proposal was broader and referred to individuals who claimed or appeared to claim to be victims of a violation. That was necessary, in his view, as some petitioners might be quite uneducated and might not make it clear that they were claiming to be victims of a violation. The broader formulation in his proposal would permit the Secretary-General to transmit such communications to the Committee without having to decide on that aspect of their compliance with article 1. The decision would again be made by the Committee, as it should be.

48. Mr. LALLAH said that in general, he preferred Sir Vincent Evans' proposal, although Mr. Movchan was quite correct in his concern that the Committee should confine itself to communications submitted in accordance with article 1 of the Optional Protocol. The rule should be formulated in such a way as to facilitate the task of the Secretary-General.

49. Mr. MOVCHAN said that the amendment proposed by Sir Vincent Evans was not in accordance with article 1 of the Optional Protocol, which did not contain the words "appears to claim". The Committee had no right to add to the provisions of the Protocol. Moreover, the basic idea of the proposed amendment was already covered by the provisions of rule 79, paragraph 2.

50. He agreed that it would be very difficult for the Secretariat to decide on the question of jurisdiction. Such decisions could be made by the Committee on the basis of the information provided under rule 81. Rather than add to the provisions of the Protocol, it might be better simply to include a general reference to article 1 of the Optional Protocol in rule 79, paragraph 1.

51. Mr. KOULISHEV supported the proposal that a general reference to article 1 of the Protocol should be included in paragraph 1.

52. Mr. PRADO VALLEJO agreed that it would be more practical to include a general reference to article 1 of the Protocol in paragraph 1. Paragraph 1 could read: "The Secretary-General shall bring to the attention of the Committee, for its consideration, any communications received in accordance with article 1 of the Protocol."

53. Mr. GANJI shared the view expressed by Mr. Prado Vallejo. It would be inadvisable to ask the Secretariat to decide which individuals had been victims of violations of the rights set forth in the Covenant. The Committee might find it necessary to set up a working group to examine communications and decide whether they were admissible and whether more information was required from the author. In any event, the Committee must keep within the confines of article 1 of the Protocol.

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54. Mr. MORA ROJAS said that the existing wording of rule 79 should be retained, possibly with minor amendments. The procedure provided for in that rule would greatly facilitate the work of the Committee. Moreover, the provisions of rule 80 precluded the possibility that pertinent communications would not be brought to the attention of the Committee.

55. Mr. MAZAUD (Deputy Director, Division of Human Rights) said that the existing wording of rule 79, paragraph 1, was designed to avoid placing the Secretariat in the difficult position of having to make a final decision with regard to the admissibility of communications. Under rule 88, such decisions could be made by the Committee.

56. The CHAIRMAN suggested that rule 79, paragraph 1 should read: "The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications which are, or appear to be, submitted for consideration by the Committee under article 1 of the Protocol."

57. Mr. GRAEFRATH said that it might be better to begin the paragraph with the words "In accordance with article 1 of the Protocol", since it was the Secretary-General rather than the author of the communication who would be acting in accordance with the Protocol.

58. Mr. ESPERSEN said that article 1 of the Protocol related to the individual rather than to the Secretary-General. Consequently, the wording suggested by the Chairman would be preferable.

59. Mr. LALLAH said that he could accept the wording suggested by the Chairman.

60. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the wording which he had suggested for paragraph 1.

61. It was so decided.

62. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to replace the word "intention" by "wish" in both sentences of paragraph 2.

63. It was so decided.

64. Rule 79, as amended, was adopted.

Rule 80

65. Mr. MORA ROJAS said that members of the Committee should be provided with the full text of communications, rather than with a brief summary of their contents, which could involve interpretation by the Secretariat. Accordingly, he proposed that draft rule 80 should read:

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(Mr. Mora Rojas)

"1. The Secretary-General shall communicate immediately to all members of the Committee the full text of any communications submitted to it in accordance with rule 79 above, together with a brief summary of their contents and a list of such communications.

"2. The Secretary-General shall maintain a permanent register of all the communications to which this rule relates."

66. Mr. OPSAHL said that, while he agreed that the full text of communications should be available to members of the Committee, it might prove difficult to combine both speed and thoroughness, since the volume of documentation relating to a given case might be considerable. Consequently, the Secretariat should prepare a statement of facts based on the documents submitted. It would then be easier for the Committee to determine in what form the rest of the documents should be brought to its attention.

67. Mr. MAZAUD (Deputy Director, Division of Human Rights), replying to a question put by Mr. Lallah, said that the wording of rule 80 was designed to avoid any undue delay between the receipt of communications by the Secretary-General and their submission to the Committee. Furthermore, experience had shown that communications could be voluminous so that the translation of all of them into the working languages of the Committee could be time-consuming and costly. Naturally, any communications deemed admissible by the Committee would be translated and circulated to members.

68. The CHAIRMAN said it was essential for the Committee to be provided with the full text of communications, since it could not consider cases on the basis of summaries.

69. Mr. TOMUSCHAT said that the Committee should be informed at regular intervals of developments in cases submitted to it, particularly since, under rule 86, it could request States Parties to take interim measures. Such information could be provided at monthly intervals. Accordingly, the words "at regular intervals" should be inserted after the word "circulate" in rule 80, paragraph 1.

70. Sir Vincent EVANS said that the words "this list" in paragraph 1 should be replaced by "such lists".

71. Mr. OPSAHL proposed that paragraph 2 should read: "The Secretary-General shall prepare and circulate to the Committee, as soon as possible, a statement of the relevant facts submitted by the author of the communication."

72. Sir Vincent EVANS said that it might be preferable to place Mr. Opsahl's amendment after rule 81, as a separate rule. Furthermore, it might be better to refer to "alleged" rather than "relevant" facts.

73. Mr. OPSAHL said that Sir Vincent Evans' suggestion was acceptable. He had an open mind as to the location of his amendment.

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74. Mr. TARNOPOLSKY said that it might be simpler to insert the words "and shall add thereto such clarifications as shall be submitted under rule 81" after the word "contents" in rule 80, paragraph 1.

75. Sir Vincent EVANS said that the Committee might find such a list very cumbersome. In his view, additional information should be added to separate case files rather than to the list itself.

76. Mr. TARNOPOLSKY said that if his suggestion made rule 80, paragraph 1, too complicated, it might be better to replace the words "a statement of the alleged facts submitted by the author of the communication" in Mr. Opsahl's proposal by the words "a summary of the clarifications submitted under rule 81".

The meeting rose at 6.05 p.m.