

**INTERNATIONAL
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ON CIVIL AND
POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

First session

SUMMARY RECORD OF THE 12th MEETING

Held at Headquarters, New York,
on Tuesday, 29 March 1977, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

Meetings of the Committee in 1977 and 1978

Adoption of the rules of procedure of the Committee in accordance with article 39
of the Covenant (continued)

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The meeting was called to order at 10.45 a.m.

MEETINGS OF THE COMMITTEE IN 1977 AND 1978

1. The CHAIRMAN announced that the officers of the Committee had decided to recommend to members that the Committee's second session should be held in the summer of 1977 at Geneva from 8 August at the earliest or from 15 August at the latest and that it would last three weeks.
2. Mr. MOVCHAN said he thought it would be preferable to have the second session of the Committee begin as late as possible, since in general Member States submitted their reports without observing the time-limits fixed. If the second session of the Committee did not begin until 1 September, for example, the Committee would doubtless have a greater number of reports available and the Secretariat would have more time to prepare the necessary documentation.
3. In any case, in a spirit of compromise and taking into account the fact that members of the Committee might not be free in September, he would accept the date 15 August.
4. Mr. GANJI indicated that, for a number of reasons, including the calendar of conferences of the United Nations, he preferred the date 8 August.

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)

5. Mr. SUY (Legal Counsel), replying to questions raised by members of the Committee concerning the matter of consensus, pointed out that article 39, paragraph 2 (b), of the Covenant stipulated that "decisions of the Committee shall be made by a majority vote of the members present". It had been suggested that the Committee should make its decisions by consensus or, for certain matters, by a larger majority than the one specified in the Covenant. In his opinion, any provision which would rule out the possibility of a vote or require a larger majority than a majority of members present was contrary to the Covenant. However, nothing prevented the Committee from trying to reach a consensus, on the understanding that, if it should not succeed, its decisions would be put to the vote and taken by the majority provided for in article 39 of the Covenant.
6. He noted that the International Civil Service Commission, which, like the Committee, was a body composed of experts sitting in their personal capacity, normally adopted its decisions by consensus. If a consensus could not be reached, the provisions empowered the President, and, if a member so requested, obligated him to put proposals to a vote. Such a provision in no way ruled out the possibility of taking a vote. The Committee could, therefore, study the possibility of incorporating a similar rule in its rules of procedure, which would be completely compatible with the provisions of the Covenant.
7. With regard to the matter of the majority, he pointed out that, although the

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(Mr. Suy, Legal Counsel)

Covenant specified the majority required for the adoption of decisions by the Committee, article 67, paragraph 2, of the United Nations Charter stipulated that "decisions of the Economic and Social Council shall be made by a majority of the members present and voting". That provision had always been interpreted to mean that all decisions of the Economic and Social Council required the majority provided for in the Charter. A similar rule could be found in the rules of procedure of the UNICEF Executive Board. It should be noted that both the rules of procedure of the Economic and Social Council and those of the UNICEF Executive Board had provisions concerning reconsideration of proposals but those provisions did not affect the rule concerning the majority required for all other decisions, namely a majority of members present and voting. That practice was contrary to the practice of other United Nations bodies, which generally took a decision to reconsider by a two-thirds majority.

8. Mr. OPSAHL pointed out that the matter of reconsidering proposals which had already been adopted affected rules on decision-making and he wished to know whether the finality of adopted decisions had been officially expressed in any document or whether it was simply assumed.

9. Mr. ESPERSEN noted that some bodies, like the Human Rights Committee, took decisions which affected the rights of individuals. When those decisions had been communicated to the persons concerned or when they had been made public, it could be an extremely delicate matter to decide that they should be reconsidered. In taking such a decision, the Committee ran the risk of harming persons whom it was supposed to protect. He wondered, therefore, whether the Committee should not begin by establishing a distinction between the various kinds of decision taken.

10. Mr. TOMUSCHAT felt that it was conceivable that decisions could be reconsidered when they had been taken by bodies exercising legislative functions. The functions of the Committee were quite different. He wished to know, therefore, whether it would be possible, for example, for a majority to decide to reconsider decisions taken by the United Nations Administrative Tribunal.

11. Sir Vincent EVANS said that he thought any decision concerning provisions to be adopted with regard to the question of a consensus should first of all take into account the nature of the Committee's functions.

12. It had been said that the Committee's functions were quasi-judicial in that its task was to supervise the implementation of the provisions of the Covenant. Did the Legal Counsel know whether the functions of the International Civil Service Commission were similar to those of the Committee? If not, did he know of any international bodies comparable to the Committee whose decisions were taken by consensus?

13. Mr. LALLAH noted in connexion with the matter of reconsidering proposals that the Committee had adopted rule 49 of its rules of procedure, which referred to a "proposal" and not to a "decision". He wished to know, therefore, whether there was any difference from the legal standpoint between the words "proposal" and "decision".

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14. Mr. MORA ROJAS was not sure of the meaning of the word "majority" in article 39, paragraph 2 (b), of the Covenant. Did the paragraph mean that Committee decisions were taken by an absolute majority or that the decisions taken were those which had received the greatest number of votes, whatever that number might be?
15. Mr. SEMINEGA observed that the rules of procedure of the Committee could not deviate from the provisions of the Covenant. The latter provided that 12 members should institute a quorum and that the Committee should adopt its decisions by a majority, which, in his view, did not at all suggest the idea of a consensus. Article 39, paragraph 2 (b), seemed extremely clear to him. If the quorum of the Committee consisted of 12 members, namely two thirds of its membership, it was clear that its decisions were taken by a simple majority.
16. Mr. SUY (Legal Counsel), replying to Mr. Mora Rojas, stated that article 39, paragraph 2 (b), specified that decisions of the Committee should be made by a majority vote of the members present. Since the quorum consisted of 12 members, the majority required was a simple majority.
17. On the matter of consensus, he repeated that, although rule 30 of the rules of procedure of the International Civil Service Commission, to which he had previously referred, provided that the decisions of the Commission were normally to be taken by consensus, article 39 of the Covenant stipulated that decisions of the Committee were to be taken by a majority vote of members present. However, nothing prevented the Committee from adding a provision to the effect that it would attempt to arrive at a consensus before taking a vote, on the express condition that the provision in the Covenant would be observed.
18. He would answer the other questions raised by members of the Committee after he had had the opportunity to consider them.
19. Mr. MOVCHAN thanked the Legal Counsel for having emphasized that any proposal to have the decisions of the Committee taken by a greater majority than the majority of members present was contrary to the provisions of the Covenant. It was also useful to specify, as he had done, that the rules of procedure of the International Civil Service Commission, a body which was comparable to the Committee, provided that decisions of the Commission were normally taken by consensus but that such a provision in no way excluded the possibility of putting proposals to a vote in conformity with article 39 of the Covenant.
20. He was particularly glad that the Legal Counsel had cited as examples only bodies which were comparable to the Committee. He felt that it was contrary to the provisions of the Covenant to liken the Committee to a legislative or juridical body and that the only bodies with which it could be compared were those which, like it, dealt with the rights of individuals.
21. Sir Vincent EVANS said that there was no point in prolonging the discussion with a repetition of what had already been said since the beginning of the session concerning consensus and the rule on voting. It would perhaps be useful for the Secretary of the Committee to provide the Legal Counsel with the relevant summary records.

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Rule 80 (continued)

22. Rule 80, as amended at the preceding meeting, was adopted.

New rule

23. Mr. OPSAHL and Mr. TARNOPOLSKY proposed the addition of a new rule which would be included in the final version after existing rule 80.

24. The proposed new rule would read: "For each registered communication, the Secretary-General shall, as soon as possible, prepare and circulate to the members of the Committee a summary of the relevant information obtained."

25. The new rule was adopted.

Rule 81

26. Mr. ESPERSEN said that he had no objections to raise to rule 81 as a whole. However, it was possible for a State party to have entered a reservation when ratifying the Covenant and, in such cases, the Secretary-General had to determine whether its reservations applied to the communication under consideration.

27. Rule 81 was adopted.

Rule 82

28. Mr. TOMUSCHAT said he considered the second sentence in rule 82 to be unnecessary because the meetings to which it referred were concerned not with examining communications from individuals but with general issues such as procedures for the application of the Protocol. He therefore proposed that it should be deleted.

29. Mr. URIBE VARGAS, Rapporteur, supported the proposal made by Mr. Tomuschat since those matters had already been dealt with in other provisions.

30. Mr. GRAEFRATH observed that the examination of a communication from an individual might also be of general interest and, in such cases, the Committee's deliberations should take place in public rather than closed meetings. Thus it might be useful to retain that sentence.

31. Mr. GANJI said that he shared Mr. Graefrath's view because the situation which the latter had described had already arisen. The Committee was master of its own procedure and should be able to decide whether general issues were to be considered at public meetings. If it was decided that they could be considered at public meetings only, the hands of the Committee would be tied and it would no longer be able to raise such questions in closed meetings, which might create difficulties in practice.

32. The CHAIRMAN said that general issues might arise during closed meetings devoted to the consideration of communications. The rule was therefore aimed at allowing the Committee to hold public meetings devoted exclusively to such issues.

(The Chairman)

33. If there was no objection, he would take it that the Committee wished to adopt rule 82 as it stood.

34. Rule 82 was adopted.

Rule 83

35. Mr. MORA ROJAS proposed that the expression "from time to time" which, in his view, was too vague, should be replaced by the words "should it so decide".

36. Mr. OPSAHL said that the Committee should decide whether the names of the authors of communications should be kept confidential. The Covenant, which stipulated in article 41, paragraph 1 (d), that communications should be considered in closed meetings, provided some indication as to how the question might be resolved, but it would be useful for the Committee to lay down guidelines in the matter.

37. Sir Vincent EVANS proposed that the words "may from time to time issue" should be replaced by the words "may decide to issue".

38. Mr. LALLAH said the simplest procedure would be to delete the expression "from time to time" and leave the rest of the rule unchanged.

39. Rule 83, as amended, was adopted.

Rules 84 and 85

40. Mr. TARNOPOLSKY said that the provisions contained in rule 84, paragraph 1 (a) and (b), were inappropriate in the light of the provisions of rule 85. The latter rule provided that if a member of the Committee did not wish to take part in the consideration of a communication, he should so inform the Chairman and that, in the event of disagreement, the Committee should decide. That meant that the Committee could oblige a member to take part in its deliberations. However, such a member might be motivated by valid considerations other than those set forth in rule 84.

41. Accordingly, the scope of rule 84 should be broadened and, in any event, specific provisions should be laid down for cases in which a member could decide not to participate in the examination of a communication.

42. Mr. OPSAHL observed that the authors of a communication might object to the presence of a member of the Committee. It should therefore be possible for the Committee to take a decision in such cases. Besides, it was unlikely that in practice the Committee would impose its views on one of its members if the latter felt that he should not take part in a meeting.

43. Mr. MOVCHAN said that rule 84, paragraph 1 (b), was entirely clear but that paragraph 1 (a) was somewhat unsatisfactory. What, for example, was meant by the words "personal interest"?

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(Mr. Movchan)

44. In order to avoid making the scope of paragraph 1 unduly restrictive, a general wording might be adopted, further subparagraphs might be added or a few illustrative examples might be provided.

45. Mr. HANGA said that the question of personal interest might be raised by the author of a communication, by the Committee itself or by a member of the Committee who had been involved in taking a decision relating to a case under consideration. Obviously in the first two cases it was for the Committee to take a decision. In the latter case, he believed, as did Mr. Tarnopolsky, that the Committee could not in any way impose its decision on a member if he considered that he should not take part in a meeting.

46. Mr. URIBE VARGAS, Rapporteur, said that there was a contradiction between rule 84 and rule 85. According to rule 84, it was the Committee which had the power to take a decision, whereas according to rule 85 it was the Chairman. A possible solution would be to combine the two into a single rule.

47. The CHAIRMAN said that there were two cases in which a member of the Committee should not participate in the examination of a communication, as stipulated in rule 84. In any event, he did not believe that it was for the Chairman to question a decision that had been taken. If the Committee had no objections, he suggested that Mr. Tarnopolsky, Mr. Uribe Vargas, Mr. Hanga and Sir Vincent Evans should be asked to draw up a new rule combining rules 84 and 85.

The meeting rose at 12 noon.