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HUMAN RIGHTS COMMITTEE

First session

# SUMMARY RECORD OF THE 13th MEETING

Held at Headquarters, New York,
on Tuesday, 29 March 1977, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 3.30 p.m.

ORGANIZATION OF WORK

1. Mr. LALLAH announced that consultations had not yet resulted in agreement concerning the various outstanding rules of procedure. He therefore suggested that the Committee should form a working group to attempt to resolve all such problems and that the working group should meet the following morning before the regular Committee meeting.

2. Mr. TARNOPOLSKY favoured setting a limit to the time allotted to the working group, so that the Committee would be sure to have a morning meeting, since it still had many items to consider.

3. The CHAIRMAN said that that was his intention. If he heard no objection, he would take it that the Committee agreed to establishing an open-ended working group to meet the following morning before the Committee meeting to resolve problems concerning the rules of procedure which were still outstanding.

4. It was so decided.

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 (Under-Secretary-General, The Legal Counsel), referring to the question put by Mr. Opsahl at the preceding meeting whether decisions of the Committee were to be considered final and whether, consequently, it was necessary to include in the rules of procedure provisions relating to the reconsideration of decisions, said that the practice of United Nations bodies in that regard was extremely varied; the rules of procedure of some bodies contained provisions relating to that matter, whereas others did not. Mr. Espersen had observed that the reconsideration of decisions taken by simple majority would affect the interests of individuals; in that connexion, he had referred to the principle of acquired rights and had maintained that in order to safeguard those rights more than a simple majority should be required for the reconsideration of decisions.

6. Mr. Tomuschat had referred to the necessity of distinguishing between bodies which had legislative functions and those which were of a judicial nature and Sir Vincent Evans had evidently had the same distinction in mind when making a number of remarks at the preceding meeting. He himself believed that the Human Rights Committee was neither a legislative nor a judicial body and that every expert body was sui generis.

7. With reference to a question put by Mr. Tomuschat regarding the functioning of the United Nations Administrative Tribunal, he said that article 10 of the Statute of that body provided that it should take all decisions by a majority vote and that, subject to the provisions of articles 11 and 12, its judgements were final and without appeal. Article 11 related to a procedure whereby a Member States the Secretary-General or the person in respect of whom a judgement had been rendered could appeal to a special committee on the ground that the Tribunal had exceeded its jurisdiction or competence or had failed to exercise jurisdiction vested in it, or had erred on a question of law relating to the provisions of the Charter of the

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United Nations, or had committed a fundamental error in procedure which had occasioned a failure of justice. The Committee to which the judgement was appealed did not issue a judgement of its own but requested an advisory opinion of the International Court of Justice. Article 12 set forth the principle encountered in all legal systems whereby appeals could be brought in the event of the discovery of a fact of such a nature as to be a decisive factor, which fact had been, when the judgement had been given, unknown to the Tribunal and the party claiming revision. In such cases, the Tribunal could itself review the matter and render a judgement by majority vote. The provisions governing the work of the Administrative Tribunal might perhaps provide the basis for a solution to the problems facing the Human Rights Committee.

8. As to the question whether proposals adopted by the Committee were to be considered decisions, he replied in the affirmative.

9. With regard to the question asked by Sir Vincent Evans whether the functions of the International Civil Service Commission were similar to those of the Committee, he drew attention to chapter III, article 10, of the Commission's Statute which indicated that its functions were in no way similar to those of the Human Rights Committee.

10. Mr. TOMUSCHAT said it was his understanding that disputes concerning the legality of administrative decisions taken by the Secretary-General could not be brought before the International Civil Service Commission.

11. Mr. HANGA wondered whether it was possible to compare the Committee to a conciliation body.

12. Sir Vincent EVANS asked whether there were any other bodies in the United Nations system which had functions comparable to those of the Committee and which had incorporated in their rules of procedure the consensus method of decision-taking.

13. Mr. GANJI said that article 39 of the Covenant clearly stipulated that decisions of the Committee were to be made by a majority vote of the members present. The Committee had already approved rule 49, which applied the two-thirds majority rule to the reconsideration of decisions, although a decision to reconsider a previous decision was none the less a decision under the terms of the Covenant and should thus be taken by simple majority. He therefore wondered whether the Committee could incorporate in its rules of procedure provisions which went beyond those laid down in the Covenant. Rule 57 of the rules of procedure of the Economic and Social Council provided that proposals, once adopted or rejected, could not be reconsidered at the same session unless the Council so decided, and rule 60 provided that the decisions of the Council should be made by a majority of members present and voting. It would seem more correct for the Committee to adopt similar provisions for its own rules of procedure, especially in view of the information just given by the Legal Counsel.

14. Mr. TARNOPOLSKY, observing that in the course of its deliberations, the Committee had frequently referred to the rules of procedure of the Committee on the Elimination of Racial Discrimination, pointed out that article 10 of the International Covenant on the Elimination of All Forms of Racial Discrimination provided that that Committee should adopt its own rules of procedure. He asked whether he was correct in assuming that the Committee on the Elimination of Racial

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(Mr. Tarnopolsky)

Discrimination might have made a reference to consensus in its rules of procedure without in any way raising the question of a majority because the International Convention contained no reference to that matter. However, rule 49 of the rules of procedure of the Committee on the Elimination of Racial Discrimination did not in fact refer to consensus, but merely provided that decisions of the Committee should be made by a majority of members present and voting.

15. Mr. SUY (Under-Secretary-General, The Legal Counsel), replying to the question put by Mr. Hanga, said that conciliation was only one aspect of the Committee's work.

16. In answer to the question asked by Sir Vincent Evans, he indicated that the rules of procedure of the Conference on the Law of the Sea, the International Civil Service Commission, the Board of Governors of the United Nations Special Fund and the Council of the United Nations University all contained specific references to consensus.

17. With regard to the remarks made by Mr. Tarnopolsky, he did not believe that the absence of a reference to consensus in the basic document of an organ was an obstacle to the inclusion of provisions on consensus in its rules of procedure or to a decision by that body to take decisions on such a basis. Consensus was not mentioned either in the Charter of the United Nations or in the rules of procedure of the General Assembly; yet it was an important procedure in the work of the General Assembly.

18. With regard to the points raised by Mr. Ganji, he said it was his personal opinion that there was nothing to prevent a body from stipulating in its rules of procedure that a two-thirds majority was required for the reconsideration of decisions.

19. Mr. PRADO VALLEJO asked if the Legal Counsel could give some indication of the practical implications of consensus.

20. Mr. SUY (Under-Secretary-General, The Legal Counsel) said that decisions reached by consensus had the same force as decisions taken by a vote.

Rules 84 and 85 (continued)

21. Mr. TARNOPOLSKY announced that, following consultations on rules 84 and 85, it had been decided that they dealt with separate cases and should not be consolidated. It had been agreed that rule 84 should remain unchanged, whereas rule 85 should read: "If, for any reason, a member considers that he should not take part or continue to take part in the examination of a communication, he shall inform the Chairman of his withdrawal."

22. Mr. GANJI said that he could accept that formulation of rule 85 but felt that there could be problems. To take a hypothetical case, seven members of the Committee might withdraw, in which case there would be no quorum and the Committee would be unable to take action.



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23. Mr. ESPERSEN said that, although the text could be criticized for various reasons, he found it generally acceptable. In general, members had a duty to serve on the Committee and should not have complete freedom to withdraw. The rule might need revision later as the Committee gained experience.

24. Rule 84 was adopted.

25. Rule 85, as amended, was adopted.

Rule 86

26. Sir Vincent EVANS felt that rule 86 should reflect the fact that it might be necessary to establish more than one group of the kind referred to in rules 86 and 88 as the number of communications received by the Committee increased. He therefore suggested that the beginning of the first sentence should read: "The Committee, or a group established under rule 88 below ...".

27. There would probably be two stages in the consideration of a communication by the Committee. The Committee would first have to decide on the admissibility of a communication and would then examine the merits of the case. Under rule 86 as it stood, the Committee could ask a State to take certain measures, even before the communication had been found admissible; that might be somewhat presumptuous on the part of the Committee. He therefore suggested that the second sentence should read: "In doing so, the Committee or the group may at any time after a communication has been determined admissible inform the State concerned ...". He noted that the procedure of determining admissibility might take time and he hoped that rule 89 would enable the Committee to deal with urgent matters on a priority basis, inasmuch as the possible need for interim measures might of itself be grounds for urgency.

28. Mr. ESPERSEN felt that the problem of interim measures to avoid irreparable damage to the petitioner was important. The delays involved in the Committee's procedures made it quite possible that the execution of a sentence by a State, especially a death sentence, would make the whole case obsolete. It was necessary that the Committee or a subsidiary group should be able to reach a quick decision on interim measures.

29. He felt that the word "request" in rule 86 was too strong and that the Committee could reasonably only recommend that the State Party concerned should take interim measures in order to avoid irreparable damage to the victim of the alleged violation.

30. Mr. GRAEFRATH noted that there was no provision in the Optional Protocol which gave the Committee the competence to delegate its powers to a group or a subsidiary body. While the establishment of a subsidiary group might be a useful working method, such a group could have no competence to make requests; requests could only be made by the Committee itself. There were also no provisions which gave the Committee the competence to request measures of a State. Under article 5 of the Optional Protocol, the Committee was merely to consider communications and forward its views to the State concerned.



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31. Mr. URIBE VARGAS felt that the rule was appropriate and agreed with the changes suggested by Sir Vincent Evans and Mr. Espersen. The procedures provided for under rule 94 could lead to considerable delays during which time irreparable damage could be caused to the victim; for that reason, it might be better to have a group which met continuously, in order to avoid delays. The decisions of such a group would, in any case, not be binding; they would merely be recommendations.

32. Mr. KOULISHEV agreed with Mr. Graefrath that rule 86 might exceed the provisions of the Optional Protocol. There was no justification for the Committee, let alone one of its subsidiary bodies, requesting interim measures of a State.

33. Mr. GANJI saw no particular difficulty in having groups to facilitate the work of the Committee and make recommendations to it. He could accept Sir Vincent Evans' amendments to rule 86 but appreciated the legal problem connected with interim measures referred to by Mr. Graefrath. A request for interim measures would constitute very strong action on the part of the Committee, considering that ultimately all the Committee could do in connexion with a case was to forward its views to the State and the individual concerned.

34. Mr. SEMINEGA felt that the impasse could be avoided by having the officers of the Committee and not the Committee itself request interim measures.

35. Mr. GRAEFRATH wished to clarify that he was not opposed to the establishment of groups, but he insisted that such groups, even after consultation with the Chairman of the Committee, could not request States Parties to take interim measures.

36. Mr. PRADO VALLEJO said that the Committee must be able to take speedy action and deal with urgent cases. If necessary, it should be able to prevent irreparable damage to individuals as part of its duty to protect human rights. To that end, groups such as those referred to in rules 86 and 88 should be able to recommend that States take measures to prevent irreparable damage to a petitioner; the Committee could, in turn, take a decision on the recommendations submitted by the group.

37. Mr. OPSAHL strongly endorsed the adoption of rule 86 with the minor drafting changes which had been suggested. In particular, he was in favour of replacing the word "request" with the word "recommend" in order to avoid any impression that rule 86 was in any way at variance with the provisions of the Protocol. He did not believe that rule 86 should apply only to communications which had already been found to be admissible, since the second sentence made it clear that the recommendations of the Committee or group established by it would not prejudice the determination of the admissibility or validity of a communication. Rule 86 was worded in such a way as to ensure that the Committee would not be acting ultra vires.

38. Mr. TOMUSCHAT fully endorsed rule 86 and the amendments which had been suggested. It was clear that the power of any group established by the Committee would be limited to making recommendations. With regard to the question whether the Committee as a whole should make such recommendations, he pointed out that, in national law courts, the presiding judge often had powers to order interim measures and, in the international sphere, subsidiary bodies were sometimes empowered to act on behalf of their parent organs in specific cases when sufficient reason existed.



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39. Mr. ESPERSEN said that, while there was no reference in either the Covenant or the Protocol to the possibility of recommending interim measures, it was a commonly accepted notion that bodies had such implied powers as were necessary to enable them to perform their functions in a reasonable manner. A stronger formulation of rule 86 was, therefore, needed. Accordingly, he proposed that the words "request the State Party concerned to take interim measures" should be replaced by the words "forward to the State Party concerned its views as to whether interim measures might be necessary". Such a change would be in conformity with the letter and spirit of the Protocol and would ensure that the Committee would have the impact it was intended to have.

40. Mr. GANJI said he had no difficulty in accepting the change proposed by Mr. Espersen. The Committee would presumably be kept informed by any group it might establish of any views communicated to States Parties and, should it disagree with those views, it could always adopt its own position on the matter. Such instances were likely to be rare, however, since rule 86 provided that views on interim measures should be formulated after consultation with the Chairman of the Committee. It might be useful, nevertheless, to add a sentence in rule 86 stipulating that the views communicated to States concerning interim measures should be brought to the attention of the Committee at its first meeting after the transmission of the views in question.

41. Mr. LALLAH said that, in municipal jurisdictions, even such urgent matters as interim measures were always subject to appeal. It might be useful, therefore, to add a paragraph in rule 86 providing that States had the right to request that measures recommended by a group established under rule 88 should be referred to the Committee as a whole. That would avoid the difficulty involved in authorizing a group to make recommendations regarding interim measures when in actual fact the competence for doing so under the Covenant lay with the Committee.

42. Mr. KOULISHEV said that he had no objection to the wording proposed by Mr. Espersen. However, as a matter of principle, only the Committee should be able to communicate with States Parties. No subsidiary body of the Committee should be authorized to do so.

43. Mr. GRAEFRATH said that he had serious doubts with regard to the provisions of rule 86. Under article 39 of the Covenant, decisions could be made only by a majority of the Committee. It was difficult, therefore, to see how the Committee could delegate its decision-making power to a small group.

44. Mr. ESPERSEN said that, although a group might not be competent to take decisions or communicate with States Parties, the procedure provided for in rule 86 might not work in practice if the Committee alone was empowered to do so. He proposed, therefore, that the Chairman should be authorized to communicate with a State Party on behalf of the Committee, after consultation with the group concerned.

45. Mr. OPSAHL said that rule 86 might include a provision enabling the Chairman to consult with the whole Committee when it was not in session. There appeared to



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(Mr. Opsahl)

be safe legal grounds for the adoption of rule 86, provided that it was made clear that the steps a group might take did not prejudge the exercise of the functions of the Committee under the Protocol.

46. Sir Vincent EVANS said that there were a number of questions regarding the interpretation of the Optional Protocol which required further consideration before the Committee took a final decision. One possible solution might be to authorize subsidiary groups to make recommendations to the Committee regarding interim measures to be taken by the State Party concerned. He could see no objection to informing the State Party concerned of those recommendations. No doubt, as a gesture of good faith, the State Party concerned would then give due weight to the fact that the recommendations in question were being made to the Committee. Such a procedure would also be within the scope of the Optional Protocol.

47. Mr. LALLAH agreed with the views expressed by Mr. Graefrath. The Committee could not delegate its powers to subsidiary groups. If such a group was authorized to communicate with the State Party concerned, then that State Party must also be allowed to appeal to the Committee, a procedure which could entail a delay of up to six months. In the circumstances, it might be advisable to limit the exercise of the powers provided for in rule 86 to the Committee.

48. Mr. MOVCHAN said that, in carrying out its work, the Committee must adhere strictly to the provisions of the Optional Protocol. The Protocol contained no provision such as that in article 42 of the Covenant, empowering the Committee to set up subsidiary groups. Consequently, for the present, the Committee should not set up any subsidiary groups. If, in the future, the Committee's workload became too heavy, the question could be taken up again.

49. Furthermore, the Optional Protocol contained no provision empowering the Committee to request the States Parties concerned to take interim measures. Consequently, the provisions of rule 86 conferred on subsidiary groups powers which were not in keeping with the provisions of the Covenant or the Optional Protocol. He urged the Committee not to take a hasty decision which might deviate from those provisions.

50. Mr. LALLAH said that, while, to a large extent, he shared the views expressed by Mr. Movchan, he did not entirely agree that the Committee would be exceeding its powers under the Optional Protocol by establishing a subsidiary group. In his view, the Committee was entitled to do so, provided that it retained the exclusive power to make decisions. Under rule 88, such a group could only make recommendations.

51. The provisions of rule 86 would be consistent with the provisions of the Covenant and the Optional Protocol if the recommendations of the group were to be submitted to the Committee or were made subject to final approval by States Parties.

52. Mr. TOMUSCHAT said that, while there seemed to be general agreement among members that the Committee should not depart from the provisions of the Covenant and the Optional Protocol, it could sometimes be difficult to interpret the meaning

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(Mr. Tomuschat)

of those provisions. A clear distinction should be drawn between the power of the Committee to set up subsidiary bodies and its right to confer powers on such subsidiary bodies. Under rule 62 of its rules of procedure, the Committee clearly had the right to establish subsidiary bodies. That provision reflected the general practice of United Nations bodies, including the Committee on the Elimination of Racial Discrimination. As far as the delegation of powers was concerned, it was his view that, in matters of urgency, there was justification for departing from the rules of procedure applied in normal circumstances.

53. He could accept the wording proposed by Sir Vincent Evans, and felt that there was no legal objection to the recommendations of a group being communicated to the States Parties concerned.

54. Mr. PRADO VALLEJO said that, while he agreed that some procedure should be devised for dealing with urgent situations, the Committee should not establish groups to act as intermediaries between the Committee and States Parties. Any measures involving States Parties must be taken by the Committee itself and not by a subsidiary body. Some other way should be found to fulfil the purposes of the provisions of rule 86.

55. Mr. GANJI said that, in his view, the provisions of articles 41 and 42 of the Covenant did not apply to the question under discussion since they concerned complaints submitted by States.

56. He shared the views expressed by Mr. Tomuschat. The Committee must establish subsidiary bodies in order to assist it in carrying out its work. If the Committee was not in session, the Chairman could take action on the basis of the recommendations of such subsidiary bodies, while informing the Committee thereof. If members of the Committee felt that the Chairman had exceeded his powers, they would be free to communicate with him. On the other hand, in the absence of any objection, it would be assumed that the Committee approved of the action taken and the matter would be placed on the agenda for the following session. The Committee should endeavour to abide by the spirit of the Covenant and the Optional Protocol and should develop its own working procedures.

57. Mr. MOVCHAN said that while the Committee was, of course, entitled to set up subsidiary bodies, it could not delegate its powers to them. All decisions must be taken by the Committee itself.

58. Furthermore, under the provisions of the Covenant and the Optional Protocol, the Committee could only request further information from States Parties or submit its general comments or views to them. Those instruments contained no provision authorizing the Committee to request States Parties to take any measures. Although he was prepared to be guided by the consensus of the Committee, he did not agree with the provisions contained in rule 86 because they went beyond the scope of the Optional Protocol.

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59. Mr. OPSAHL said that the question of measures to avoid irreparable damage should be considered in the context of the Covenant and the Optional Protocol as a whole. In view of the undertaking given by States Parties under article 2, paragraph 2, of the Covenant, the suggestion that the procedure provided for in rule 86 was outside the scope of the Covenant was unacceptable.

The meeting rose at 6.05 p.m.

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