

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL

CCPR/C/SR.17
4 April 1977

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

First session

SUMMARY RECORD OF THE 17th MEETING

Held at Headquarters, New York,
on Thursday, 31 March 1977, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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

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 64

1. The CHAIRMAN read out the following amended version of rule 64, paragraph 3:

"3. Reports and additional information submitted by States Parties pursuant to article 40 of the Covenant shall be documents of general distribution. The same applies to other information provided by a State Party unless the State Party concerned requests otherwise."

2. Rule 64, as amended, was adopted.

Proposed new rule on derogation

3. Mr. GANJI proposed the inclusion in the rules of procedure of the following new rule on derogation, which was based on rule 77 of the rules of procedure of the functional commissions of the Economic and Social Council:

"A rule of procedure may be temporarily suspended provided that such suspension shall not be inconsistent with the relevant provisions of the Covenant and the Optional Protocol and provided that twenty four hours' notice of the proposal for the suspension has been given. The notice may be waived if no member of the Committee objects."

4. Mr. TOMUSCHAT said that it would be unwise at the present stage to introduce a provision which could lead to a certain amount of abuse. The rules of procedure as they stood were adequate and had been produced in a spirit of compromise. When the need arose, those rules could be amended. A new rule on suspension or derogation was both risky and unnecessary.
5. Mr. LALLAH said that the Committee was the master of its own procedure and that the rules of procedure were in any case provisional. The Committee required flexibility in its rules in order to take advantage of the experience it would acquire and to deal with urgent matters which might arise on the last day of a session. For reasons of practicality, therefore, he favoured Mr. Ganji's amendment.
6. Sir Vincent EVANS said that the Committee would not be the master of its own procedure even if it adopted a rule on derogation, since it still could not derogate from the provisions of the Convention or the Protocol. In the absence of a rule such as that proposed by Mr. Ganji, the Committee was bound by its rules of procedure. However, those rules did include provision for formal amendment, which was essential rather than for ad hoc derogation for a specific purpose. Even without specific provision for derogation, the Committee could always, provided that there was a consensus, adopt an ad hoc temporary procedure or rule; there could be no objection

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(Sir Vincent Evans)

to that. However, in order to maintain an orderly procedure, the Committee should not go further. It was important to resist the temptation to act on the basis of expediency simply to accommodate the majority of the moment. The rules should be a reliable guide applicable to all, both the majority and the minority. He was therefore opposed to the adoption of a rule providing for derogation.

7. Mr. GANJI said that a rule providing for derogation was not an innovation; precedents could be found in rule 86 of the Economic and Social Council and in the rules of procedure of the Commission on Human Rights. The Committee's rules already provided for the adoption of decisions in the spirit of co-operation, without, of course, assuming any fixed majority. Whatever the Committee did at the current stage was provisional. The rule he had proposed provided for suspension of a limited nature and for a clearly stated and specific purpose, with a delay of twenty-four hours if there were any objections. It also provided adequate safeguards. The attempt to reach consensus did not apply to all the Committee's decisions; However, if all members did not agree, he was prepared to withdraw his proposal.

8. Mr. OPSAHL said that he agreed with Mr. Ganji's proposal in substance and in principle. The Committee could in theory do without explicit provisions, but if there was disagreement as to the Committee's degree of latitude, the Committee should adopt such a rule so as to avoid ambiguity when some urgent need arose to change the rules.

9. Mr. KOULISHEV said that the rules of procedure were flexible and it was therefore better not to create a temptation to derogate from procedures. The adoption of a provision such as that proposed by Mr. Ganji would be both risky and unnecessary.

10. The CHAIRMAN suggested that consideration of the proposed new rule should be postponed until the following session.

11. It was so decided.

Rule 79

12. Mr. GRAEFRAETH proposed that rule 79 should be amended by the addition of the following sentence, adapted from article 1 of the Optional Protocol:

"No communication shall be received by the Committee or registered in a list under rule 80 if it concerns a State which is not a party to the Protocol."

13. The CHAIRMAN suggested that it would be more accurate to say "included in a list" rather than "registered in a list".

14. It was so decided.

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15. Mr. OPSAHL said situations might arise in which communications addressed to the Secretary-General from countries which were not parties to the Protocol should not be returned, for instance, when the author of the communication had left a country which was a Party to the Protocol for a country which was not, or when the communication concerned a State which was not yet a Party but soon would be. The Secretariat must keep provisional files pending clarification and should not neglect such communications. He agreed, however, that they should not be included in the list prepared by the Secretary-General.

16. Rule 79, as amended, was adopted.

Rule 86

17. The CHAIRMAN said that a consensus on rule 86 was possible if reference to decisions taken by the Group with the Chairman's concurrence could be deleted. He would not wish to make a decision as Chairman and then have that decision reversed. With the other changes that had been made, rule 86 would then read:

"The Committee may at any time forward to the State Party concerned its views whether interim measures may be necessary in order to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State concerned that such an expression of views does not imply a determination as to the admissibility or the substantive validity of the communication."

18. Mr. LALLAH suggested that the word "merits" might be more accurate than "validity" and that the word "necessary" should be replaced by "desirable". A peculiar situation might arise in which a State received no hearing, and he felt that care should be taken to avoid a situation in which views might be expressed without recourse.

19. Mr. GANJI said that he had reservations with respect to rule 86 because it might be incompatible with the conditions for the consideration of a communication by the Committee set forth in article 5, paragraph 2, of the Protocol.

20. Mr. URIBE VARGAS said that the text of the rule envisaged an exceptional or emergency situation in which irreparable damage to the victim might be involved. A human rights committee established to guarantee the implementation of the Universal Declaration of Human Rights could not wait for the implementation of a rule of procedure when humanitarian questions were involved. The rule must therefore be viewed in the light of all the articles of the Protocol rather than just article 5.

21. Mr. OPSAHL said that the terms of the Protocol were not entirely consistent. Article 5, paragraph 2, did not mean that the Committee should ignore such communications but only that it should not consider them on their merits until the conditions indicated in that article had been met. The Rapporteur had correctly stated the intentions of the Protocol as a whole. Also, many States wondered

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whether the Covenant might not be a burden and it was important not to discourage their future adherence to the Optional Protocol. He therefore suggested that the matter should be deferred until the following session so as to allow time for careful consideration.

22. Mr. GANJI said that there was no inconsistency between rule 86 and the Protocol. In that connexion, he drew attention to the provisions of rule 90. He fully agreed that there should be a rule to cover the case of an emergency involving the possibility of irreparable damage. The conditions set forth in article 5, paragraph 2, of the Optional Protocol made it especially important to have such a rule. He agreed that more time for reflection might be advisable but had no objection to adopting a rule immediately.

23. Mr. MOVCHAN said that, in view of the importance of the opinions which had been expressed and the lack of time available, consideration of rule 86 should be deferred until the following session so as to allow members time for serious consideration.

24. Sir Vincent EVANS suggested that the question whether the Committee might indicate the need for interim measures, subject to a determination of admissibility, could be left open. The problem was with the phrase "at any time". As an interim solution, he suggested the formulation "prior to forwarding its final views".

25. The CHAIRMAN suggested the following revised version of rule 86:

"The Committee may, prior to forwarding its final views on the communication to the State Party concerned, inform that State of its views whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State Party concerned that such expression of its views on interim measures does not imply a determination on the merits of the communication."

26. Rule 86, as amended, was adopted.

Rule 87

27. Mr. HANGA said that the phrase "as far as possible" in rule 87, paragraph 1, was not a legal term and could give rise to much discussion. He therefore suggested that it should be replaced by the words "in accordance with article 5 of the Protocol". Failing that, perhaps the wording of article 5 itself could be used.

28. Secondly, he believed that the words "the Committee may" in the second line of paragraph 1 should be replaced by the words "the Committee shall".

29. Finally, he proposed that the following words should be added at the end of paragraph 2: "... and if he is able to provide relevant new evidence to support his case".

30. Mr. OPSAHL said he believed that the word "may" in the second line of

(Mr. Opsahl)

paragraph 1 should be retained because there might be general interest in a given case and the Committee should not cease consideration of it merely because it had been withdrawn. For example, if the case involved flogging, it would be of general interest even if the author of the communication stated that he wished to withdraw his communication.

31. Mr. MORA ROJAS agreed with Mr. Opsahl regarding paragraph 1. With respect to paragraph 2, a problem arose because of the phrase "another person on his behalf". If that was intended to mean a representative in the legal sense of the term, he pointed out that it was not in fact a legal term. If it was understood as set forth in rule 90 (b), then the following sentence could be added at the end of paragraph 2:

"The intervention of a person other than the author shall be admissible only under the provisions of rule 90 (b)."

32. He supported the view expressed by Mr. Hanga regarding the submission of new evidence and, accordingly, suggested that the words "and the relevant proof" should be added after the words "newly discovered facts" in paragraph 2.

33. The CHAIRMAN said that the adoption of rule 87 was not an urgent matter. He therefore suggested that its consideration should be postponed until the following session of the Committee.

34. It was so decided.

Rule 88

35. Mr. GRAEFRATH wondered whether the Group referred to in rule 88 could be expected to make recommendations on the extremely varied points covered by the various articles of the Protocol referred to in the rule. He was inclined to believe that it was much too early to group all those various stages of procedure.

36. Sir Vincent EVANS said that the provisions in the various articles referred to in rule 88 would all have to be taken into consideration in order to determine whether a communication was admissible. He did not see how it was possible to avoid studying them together. Furthermore, a large number of communications might be received and it might thus be necessary to establish more than one Group. He therefore believed that paragraph 1 should refer to "one or more Working Groups" and that paragraph 2 should end with the words "the meetings of a Working Group".

37. The CHAIRMAN agreed with Sir Vincent Evans and, referring to the point raised by Mr. Graefrath, suggested that the rules of procedure might indicate that the task of the Working Groups would be limited to preliminary matters.

38. Mr. OPSAHL said that, while he understood Mr. Graefrath's point, it should be noted that the Working Groups would be submitting their recommendations in stages, thus giving the Committee time to consider them, and that the reasons for those recommendations should be stated clearly.

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39. Mr. GRAEFRATH wondered whether the Committee could adopt rule 88 with special reservations and return to it when some experience had been gained with respect to its application.

40. The CHAIRMAN said that by the end of the following session the Committee would have gained much experience with respect to the tasks carried out by the first Working Group and it could then take up the matter again. He did not believe that there was any need to express reservations when adopting the rule. If there was no objection, he would take it that the Committee agreed to the following amended version of rule 88:

"1. The Committee may establish one or more Working Groups of no more than five of its members to make recommendations to the Committee regarding the fulfilment of the conditions laid down in articles 1, 2, 3 and 5 (2) of the Protocol.

"2. The rules of procedure of the Committee shall apply as far as possible to the meetings of the Working Group."

41. Rule 88, as amended, was adopted.

42. The CHAIRMAN suggested that further consideration of the rules of procedure should be postponed until the following session. Perhaps a working group could be requested to study the rules still outstanding and to make recommendations to the Committee.

43. Replying to a question put by Mr. OPSAHL, he agreed that members who had amendments could submit them to him in writing and he would transmit them to the working group. If there was no objection, he would take it that the Committee agreed to his suggestion.

44. It was so decided.

MATTERS RELATING TO THE COMMITTEE'S METHODS OF WORK IN RESPECT OF:

(a) THE CONSIDERATION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLE 40 OF THE COVENANT

(b) THE CONSIDERATION OF COMMUNICATIONS RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

45. The CHAIRMAN said that perhaps the question of sending reminders to States parties to submit their reports might be considered under the item now before the Committee.

46. Mr. URIBE VARGAS said that some States were late in submitting their reports and, under article 40, paragraph 1 (b) of the Covenant, the Committee could send them reminders, so that it would receive the reports in time for the following session.

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47. Mr. OPSAHL said that the Committee had adopted the relevant rules of procedure on the principle that it could indeed send reminders to States Parties. The note by the Secretary-General (CCPR/C/1) indicated that the time-limit for the submission of reports had expired with respect to 35 States on 22 March 1977. He believed that reminders could be sent to those States but that they should be couched in rather gentle terms, particularly as the Committee itself had not yet decided how such reports were to be presented.

48. The CHAIRMAN suggested that the reminders might be sent after the end of May informing the States concerned of the date for the following session of the Committee and politely drawing attention to the provisions of article 40 of the Covenant.

49. Mr. LALLAH agreed with the Chairman and said that the reminders should also indicate the date by which the reports should be submitted.

50. Mr. TOMUSCHAT agreed with the views expressed by the previous speakers and said that the Committee should do its utmost to ensure that it could begin effective work at the following session.

51. Sir Vincent EVANS reminded members that the Committee had adopted a rule whereby it might, through the Secretary-General, inform States parties of its wishes regarding the form and content of reports. He therefore believed that the initial reports from States parties should be as comprehensive as possible and should contain the type of information desired by the Committee. While it was true that some reports had already been received and others were no doubt on the way, he was sure that many had not yet been completed and that it was still possible for the Committee to influence their contents. Furthermore, it could be expected that those States which had already submitted reports might wish to supplement them. It was therefore now desirable to indicate to States what material the Committee wished to see included in their reports. For example, under the relevant articles of the Covenant, those reports should include information on: (a) legislative, administrative and other measures adopted to give effect to the rights recognized in the Covenant; (b) measures taken that might impose limitations on the exercise of those rights; (c) effective remedies, referred to in article 2, paragraph 3, of the Covenant, available for alleged violations of rights; (d) difficulties which a State party might have in implementing the provisions of the Covenant; (e) the progress made in the enjoyment of the rights recognized in the Covenant.

52. Mr. MOVCHAN said that, while the present discussion dealt with matters that merited the Committee's attention, it did not fall within the scope of the item under consideration. The idea of sending reminders to States parties concerning the submission of reports was premature for several reasons. Many of the reports were doubtless on their way; some had even arrived during the current session of the Committee. Mr. Uribe Vargas had pointed out that delays in the submission and reception of reports were common. Furthermore, although the Committee had worked hard, it had not finished its own business and it would therefore not be diplomatic to urge greater promptness on the part of States parties. International practice required the Committee not to be hasty; the following session would be time enough to ascertain the number of reports which had been received and to take some action.

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(Mr. Movchan)

53. The idea of formulating guidelines and transmitting them to States parties was also premature at the present stage. The Committee had no time to work out satisfactory guidelines and it would not be helpful to States parties to receive a series of provisional and revised guidelines. The Committee should analyse the reports available and then, on the basis of its experience, it could carefully formulate guidelines for the report.

54. With regard to the item under consideration, he felt that the Committee as a whole should study the reports which were available and exchange views on methods of work. The Committee should, moreover, consider reports in the order in which they were received, in accordance with United Nations practice.

55. The CHAIRMAN pointed out that rule 69, which the Committee had adopted, provided for a procedure for the notification of States parties, through the Secretary-General, of the opening date, duration and place of the session at which the Committee was to examine the reports they had submitted.

56. Mr. LALLAH felt that the Committee should begin its work as soon as possible. On the question of reminders, he said that, although the word "reminder" was perhaps the wrong word, the Committee should take some measures to ensure compliance with the Covenant and draw the attention of States parties to their obligations under article 40, including the time-limits for the submission of reports. He proposed that a note should be formulated, in polite and diplomatic terms, for transmission to States parties some time towards the end of May 1977; such a note might even be helpful to States parties. He felt that the matter of guidelines required more thought and study, perhaps by a working group, and that it would be better to wait until the following session to consider the matter.

57. Mr. TOMUSCHAT felt that it might be premature to attempt to formulate recommendations, given the lack of time available. He agreed with Mr. Lallah that a cautious and diplomatic reminder to States parties would be valuable, especially since the Committee had been entrusted by States parties with the responsibility of supervising compliance with the provisions of the Covenant. The Committee would have no legal problem in taking decisions, since sufficient rules of procedure had been adopted for it to take action. With regard to methods of work, he felt that the Committee should establish a working group on reports submitted by States parties and that a final determination with regard to the subject matter of reports should be made only at the second session. The order in which reports were to be considered was, he agreed, an important question; in order to avoid problems of a political nature, he suggested that the question of which report should be considered first should be decided by drawing lots. The idea of having a Special Rapporteur for each report was, he felt, a good one; the reports would thereby be given more thorough consideration since one member would examine each report in particular depth and become a kind of "expert" on it.

58. Mr. OPSAHL felt that the present discussion was very relevant to the methods of work of the Committee and the item under consideration. He favoured sending a reminder to States parties, since the Committee should always be frank, as well as

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(Mr. Opsahl)

polite, in its dealings with States parties; the reminder could, if necessary, contain a sentence stating that it should be ignored if the report had already been sent. He felt that the Committee had a basis for establishing guidelines on reports without delay, since its views on the content of reports followed directly from the provisions of the Covenant.

59. Mr. GRAEFRATH pointed out that the Committee could simply inform Governments that it had begun work; that announcement might simultaneously serve as an indication that the Committee had not yet received all reports. It might also be useful to draw the attention of States parties to the relevant provisions of the Covenant concerning items to be covered in the reports submitted by them. However, he felt that any further useful information regarding the size, form and content of the report should be based on the Committee's experience with at least the first reports.

60. Mr. MOVCHAN wished to clarify that he had not meant to imply that there would be any legal difficulties for the Committee in connexion with the consideration of the reports; the relevant rules of procedure had obviously been adopted. He felt, however, that the Committee was putting itself in a rather delicate position in choosing to draw the attention of States parties to delays in their compliance with the provisions of the Covenant when the Committee itself had not completed its work for the session. He agreed that it might be useful if the Secretariat were to circulate information concerning the number of reports received and which countries had submitted them. As to the matter of criteria and guidelines, he felt that the competent authorities in each Government were fully aware of the provisions of the Covenant. The Committee should take into account all the relevant provisions of the Covenant, study the available reports and prepare more detailed guidelines when it had more experience. The considerable delays caused by postal conditions and so forth should also be borne in mind in connexion with the reception of reports.

61. Mr. LALLAH agreed that delays in transmission were quite possible and favoured sending a reminder only towards the end of May 1977, roughly two months after the deadline.

62. Mr. GANJI suggested that debate on the item should be closed. He noted that a note verbale had been sent by the Secretary-General to States parties on two occasions, the latest in November 1976. The Committee had had no time to prepare guidelines and the experience gained at the following session would help the Committee to decide what form of reports would be most useful. As part of the standard Secretariat procedure, the Secretary-General would, in any case, inform States parties about the date of the following session.

63. Mr. HANGA noted that, during the discussion on rule 71, paragraph 2, the Committee had agreed to eliminate the reference to the manner in which information should be submitted. On the matter of the order of consideration of reports, he was not in favour of drawing lots, which seemed to him to be unscientific and contrary to general practice.

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64. Mr. SCHREIBER (Director, Division of Human Rights) stated that the Committee on the Elimination of Racial Discrimination had retained some flexibility in its procedure for several reasons. Reports arrived at various times, some were longer than others and they were submitted in various languages. For those reasons, the reports were often not distributed exactly in the order of their arrival but rather in the order of their availability from the Secretariat. The Committee on the Elimination of Racial Discrimination had also indicated its wish to be able to benefit from the presence of government representatives, and it was important to bear in mind the fact that such representatives were not always available. In any case, the Secretariat worked in consultation with the Chairman of the Committee in preparing the agenda.

65. The CHAIRMAN noted that, with regard to the sending of a reminder to States parties, members seemed to favour the proposal of Sir Vincent Evans and Mr. Graefrath that the Committee should not send a reminder but should send a notification of the date of the following session and indicate its desire to have all the reports available. As to the matter of the form and content of the reports, he noted that many members of the Committee had expressed a wish to wait until the Committee had gained more experience in examining reports before attempting to formulate guidelines. He did not feel that the Committee should at the present time attempt to decide how to start examining reports or the order of their examination. There was provision for exceptions to the practice of examining reports in the order of reception in cases of urgency. The agenda for the following session should perhaps include an item on the status of reports. With regard to the Committee's own report, he noted that it had been agreed that one report should be prepared following both the 1977 sessions. In that connexion, he stated that the officers of the Committee were in contact with the officers of the Economic and Social Council.

The meeting rose at 5.55 p.m.