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COMMITTEE AGAINST TORTURE

Twenty-eighth session

SUMMARY RECORD OF THE 513th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 6 May 2002, at 3 p.m.

Chairman: Mr. BURNS

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Proposed amendments to the rules of procedure (continued) (future CAT/C/3/Rev.4)

1. The CHAIRMAN invited the Committee to resume its consideration of the amendments proposed by the Working Group to its rules of procedure, with reference to the procedure for the consideration of communications received under article 22 of the Convention.

Rule 99 (Request for clarification or additional information) (continued)

2. The CHAIRMAN said that the proposed amendments involved replacing the word "author" by the word "complainant" in paragraphs 2 and 3, and deleting the phrase "of the communication" at the end of paragraph 3. In paragraph 4, the word "communication" would be replaced by the word "complaint", and a new paragraph 5 added to read: "The Secretary-General shall instruct the complainant on the procedure that will be followed and inform him/her that the text of the complaint shall be transmitted confidentially to the State party concerned in accordance with article 22, paragraph 3, of the Convention."

3. Mr. EL MASRY said that, under paragraph 2, the Secretary-General should be given the opportunity to extend the time limit at his discretion.

4. The CHAIRMAN suggested the addition of a new paragraph 3: "Such time limit in appropriate circumstances may be extended", the following paragraphs being renumbered accordingly.

5. Mr. EL MASRY said that paragraph 4 contradicted rule 97, paragraph 3, which prohibited registration if the communication was anonymous. Furthermore, rule 99, paragraph 1 (a), required the Secretary-General to ask for the name of the complainant.

6. The CHAIRMAN said that he understood rule 99, paragraph 4, to refer to cases in which a communication had been submitted on behalf of a group, or if two members of the same family shared the same name.

7. Ms. GAER said that the name of the complainant could be explicitly excluded from the scope of paragraph 4 (renumbered paragraph 5) by redrafting it to read: "The request for clarification referred to in paragraph 1 (c) to (f) of the present rule, etc." Only subparagraphs (a), (b) and (g) were required for the list of complaints.

8. The CHAIRMAN said he took it that the Committee wished to adopt the proposed amendments to rule 99, as modified by his own suggestion and that by Ms. Gaer.

9. It was so decided.

Rule 100 (Summary of the information)

10. The CHAIRMAN said that the word "communication" was to be replaced by the word "complaint" and the phrase "as soon as possible" deleted. He took it that the Committee wished to adopt those changes.

11. It was so decided.

Rule 101 (Meetings and Hearings)

12. The CHAIRMAN said it was proposed that the phrase "and Hearings" should be added to the title of the rule, and the word "communications" should be replaced by "complaints" in paragraph 1.

13. The proposed amendments were adopted.

Rule 102 (Issue of communiqués concerning closed meetings)

14. The CHAIRMAN said that no amendment had been proposed by the Working Group to rule 102.

Rule 103 (Inability of a member to take part in the examination of a complaint)

15. The CHAIRMAN said that the Working Group proposed to replace the word "communication" by the word "complaint" in the title of the rule, to add the pronoun "she" in subparagraphs 1 (a) and 1 (b) after the word "he", to delete "or" at the end of subparagraph 1 (a), and to redraft the end of subparagraph 1 (b) to read "matter covered by the complaint". In addition, two new subparagraphs would be added, namely, "(c) If he/she is a citizen of the State party concerned; or" and "(d) If his/her participation would otherwise raise a reasonable apprehension of bias".

16. Mr. MAVROMMATIS proposed inserting the qualification "other than as a member of the Committee" after the phrase "in any capacity" in subparagraph 1 (b).

17. Mr. CAMARA asked for clarification on what was meant by "matter" in subparagraph 1 (b). If "subject matter" was the intended meaning, the French translation would be sujet; if the meaning was "case", the French translation would be objet du litige.

18. The CHAIRMAN said that "matter" was too broad a term and should be changed back to "case".

19. Mr. EL MASRY proposed adding the phrase "or employed by its Government" to subparagraph 1 (c).

20. Ms. GAER proposed adding the phrase "or any State party named in the matter" to subparagraph 1 (c).

21. The CHAIRMAN said that subparagraph 1 (d) would cover both suggestions.

22. Mr. CAMARA said that the members of the Committee served in their personal capacity, and there was thus no conflict between their nationality and their membership of the Committee. The question of whether or not to participate in the examination of a particular case was simply a matter of judgement and common sense.

23. The CHAIRMAN suggested that the word "citizen" in subparagraph 1 (c) be replaced by the word "national", which had a broader meaning. Citizenship implied a closer connection with a particular State.

24. Mr. YAKOVLEV said that the word grazhdanstvo, conventionally rendered as "citizenship", should be retained in the Russian version, since the word natsionalnost, conventionally rendered as "nationality", suggested ethnic affiliation.

25. Mr. CAMARA said that paragraph 2 seemed merely to restate subparagraph 1 (d) and should perhaps be deleted. Moreover, paragraph 2 appeared to usurp the sovereignty of States parties as enshrined in article 17, paragraph 6, of the Convention. It was not for the Committee to bar one of its members from participating in the examination of a complaint.

26. Mr. GONZÁLEZ POBLETE said that it was perfectly feasible for a member of the Committee to take part in the Committee's work while excusing himself or herself from the consideration of a particular case.

27. Mr. YAKOVLEV, supported by Mr. EL MASRY, said that subparagraphs 1 (b) and 1 (c) were all that were required. The other stipulations could expose the Committee to criticism from outside observers.

28. The CHAIRMAN said that the grounds for excluding a member of the Committee from examination of a case in which a conflict of interests might arise should be absolutely explicit, since it would diminish the Committee's integrity to be seen as anything less than scrupulously fair and impartial. The issue had nothing to do with State sovereignty.

29. Mr. MAVROMMATIS cited the example of the European Court of Human Rights, in which certain national judges had raised suspicions by voting consistently to acquit their country when it came before the court. He agreed with the Chairman that the more explicit and exhaustive the criteria for non-consideration of complaints, the better.

30. Mr. CAMARA said that article 17, paragraph 1, of the Convention stipulated that the Committee should consist of "experts of high moral standing". The formulation of hard and fast rules to exclude members when a perceived conflict of interest arose assumed that they lacked the sensitivity to recognize such a conflict themselves and thus impugned their moral standing.

31. Mr. YAKOVLEV pointed out that, if subparagraphs (a) and (d) were retained, it could be alleged, after a decision had been taken, that certain members should have been excluded from the discussion and voting, and that would cause procedural problems for the Committee.

The difficult situation might also arise in which members, with demonstrable personal interests in matters under discussion, would have to be excluded from such discussion against their will, even where the issues were very straightforward. Accordingly, he believed that it was not in the Committee's interests to retain those subparagraphs.

32. Mr. RASMUSSEN said that subparagraph 1 (a) should be retained, as it would preclude the possibility of pressure being placed on members by relatives or others with a personal interest in a given case, since those members would not in any event be participating in the discussion and decision.

33. The CHAIRMAN said he agreed that subparagraph 1 (a) should be retained and said that he would be able to accept the deletion of subparagraph 1 (d). In its place, a new provision could be added to paragraph 2 requiring members to determine, on their own initiative, whether or not a given case represented a conflict of interest for them and to inform the Chairman accordingly.

34. Mr. GONZÁLEZ POBLETE said that the provisions of subparagraphs 1 (a) and 1 (b) and of paragraph 2 were already in force prior to any amendments and their deletion would entail the risk of misinterpretation by members of the Committee, unless there were very powerful reasons for such deletion. He agreed, however, that subparagraph 1 (d) could be deleted, as not strictly essential.

35. Mr. YU Mengjia said he agreed that subparagraph 1 (a) should be retained, as the principle of conflict of interests was also upheld in domestic systems, but subparagraph 1 (d) was rather vague and could be deleted.

36. Mr. CAMARA said that the provisions of subparagraph 1 (c) were actually covered in subparagraph 1 (a) and he suggested that the latter subparagraph could be slightly expanded, thus rendering subparagraph 1 (c) unnecessary.

37. Mr. RASMUSSEN said that there was a difference between personal interest and national interest. As things stood, members of the Committee were perfectly content to withdraw when their own countries submitted their reports, but a separate provision was required to exclude participation where there was a possibility of personal interest in a case.

38. The CHAIRMAN said he took it that the Committee wished to delete subparagraphs 1 (a) and 1 (d) and retain subparagraph 1 (b) as orally amended by Mr. Mavrommatis, new subparagraph 1 (c) and paragraph 2.

39. It was so decided.

Rule 104 (Optional non-participation of a member in the examination of a case)

40. Ms. GAER said that, in the second line, the word "he" should be replaced by "he/she" and the word "his" by "his/her".

41. The CHAIRMAN said he took it that the Committee wished to approve the heading and the text of the rule, as proposed by the Working Group and orally amended.

42. It was so decided.

43. The CHAIRMAN said that, in the heading of section B, the word "communications" would, it was proposed, be replaced by "complaints".

44. It was so decided.

Rule 105 (Method of dealing with complaints)

45. The CHAIRMAN said that, according to the Working Group's proposals, paragraph 1 would contain essentially the same text, except that it specified more carefully how the Committee was to take its decisions. Paragraph 2, however, was completely new and reflected the standard practice of the Human Rights Committee.

46. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) explained that, under the current arrangements, the Human Rights Committee had a five-member working group, which had to take its decisions by consensus, whereas the Committee against Torture had a four-member working group, and required a three to one majority for decisions.

47. The CHAIRMAN said that, for the sake of clarity, the phrase "all the members" in new paragraph 2 should be worded "all its members". A decision taken by the working group would be final and not subject to review by the Committee.

48. Ms. GAER said that the revised rule would represent a substantive change to the Committee's previous procedure. Previously, the working group had made recommendations, not decisions, and she wondered why the change had been thought necessary.

49. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that the Secretariat anticipated a sharp increase in the workload of the Committee under article 22, similar to that experienced by the Human Rights Committee under its Optional Protocol. To prevent a backlog, the Human Rights Committee had delegated to the Working Group on Communications the power to decide on admissibility, adopting its decisions by consensus, and that system, which had been in operation for some years, was working well. While that Working Group did not yet adopt decisions on inadmissibility, such a procedure would probably be in place within the next few years, since the plenary was not able to cope with the current and anticipated caseload.

50. The Committee against Torture was not yet in a comparable position and might prefer that its working group should still make recommendations only but the Secretariat considered it prudent for the Committee to consider such a procedure at the current stage.

51. Mr. MAVROMMATIS suggested that the text on composition of the working group in paragraph 2 of the rule should be worded: "not less than three and not more than five". He also suggested wording whereby the working group would adopt its decisions on admissibility by a majority and on inadmissibility by consensus only.

52. The CHAIRMAN said he agreed that decisions on inadmissibility should be unanimous while those on admissibility could be by simple majority, since communications deemed admissible would in any event come before the Committee.

53. Mr. YU Mengjia said he wondered whether it was appropriate to delegate decisions on admissibility to the working group or whether such decisions should not remain subject to approval by the Committee.

54. The CHAIRMAN stressed the need for the Committee to streamline its procedures, particularly in view of the anticipated increase in cases submitted under article 22. It was unlikely that the Committee would take a different view on admissibility from that of the four or five of its members constituting the working group.

55. Mr. GONZÁLEZ POBLETE pointed out that, of the considerable time spent by the Committee on article 22 cases, at least one third was devoted to decisions on admissibility. Its work would be considerably expedited if such decisions could be delegated to a working group, thus enabling the Committee to devote more time to the substance of the cases. Decisions on inadmissibility were usually quite straightforward, the only cases posing problems being those involving the exhaustion of domestic remedies. Delegation to the working group of the power to decide on inadmissibility, with the safeguard of unanimity, would not erode the rights and powers of the Committee and would expedite its procedures. The current delay between receipt of a communication and its consideration by the Committee could be up to three or four years, which was clearly excessive.

56. The CHAIRMAN pointed out that, if a case was deemed inadmissible, the reason for its inadmissibility could be remedied and the application resubmitted.

57. Mr. CAMARA said that the working group should be constituted with due regard for equitable geographic and linguistic distribution and, if thus constituted, it could decide on admissibility and inadmissibility.

58. Mr. EL MASRY drew attention to cases where domestic procedures were very prolonged and the complainant argued that domestic remedies were unlikely to bring effective relief. In such cases, where the issue of the exhaustion of domestic remedies was contested by the State party, it should be the Committee, and not the working group, which decided on admissibility. Such cases might arise where the complainant was relying on subparagraph 5 (b) of article 22 and where domestic procedures were very prolonged but had not been technically exhausted.

59. The CHAIRMAN pointed out, that, even where cases had been deemed inadmissible because domestic remedies had not been exhausted, the complainants could still resubmit their cases to the Committee with compelling information demonstrating that it was unreasonable to expect them to continue seeking domestic remedies.

60. Mr. EL MASRY suggested the addition of a provision whereby the Committee could, if it saw fit, review the working group's decision on inadmissibility.

61. The CHAIRMAN said that the ultimate control was exercised by the Committee in any event: if the working group took a decision with which members did not agree, the Committee could rule that the working group had been in error and the Secretariat would inform the complainant accordingly.

62. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that a sentence could be added to the rules, requiring the Committee to review an inadmissibility decision by the working group during its session or deferring implementation of an inadmissibility decision by the working group until the end of the session, when it could mature into a decision of the Committee. That would enable members to review the decision during the session and, if they disagreed with it, to bring it before the Committee.

63. Mr. GONZÁLEZ POBLETE said that, if the Committee had to review decisions taken by its working group, there was little point in having the working group in the first place. Instead, he suggested that a list of inadmissibility decisions could be given to the Committee at the beginning of its session, with an indication of the relevant case files. Members would then be entitled to request the Committee to take up any case if they disagreed with the working group's decision.

64. The CHAIRMAN said that, if the Committee agreed to defer implementation of decisions on inadmissibility and admissibility for its first two sessions following the adoption of such decisions, there would be no need to make any amendment to the rules of procedure providing for the review of those decisions.

65. Mr. YU Mengjia drew attention to cases where, if an application had been deemed inadmissible, the author would be subject to immediate expulsion and there would be no possibility of resubmission, as the damage would already have been done. He also wondered what need there was for a working group, if, as suggested, other members of the Committee were also to have a say in the procedure.

66. The CHAIRMAN said that, if a case was inadmissible, no damage would have been done and the concern expressed by Mr. Yu Mengjia could arise only if the Committee did not fully trust its working group. He also pointed out that the requirement for unanimity in inadmissibility decisions was a very good safeguard.

67. Mr. MAVROMMATIS said he wondered whether, when a case was deemed inadmissible the complainant was always informed that, under rule 109, paragraph 2, the decision might be reviewed by the Committee. In the Human Rights Committee, which had had apprehensions similar to those expressed by Mr Yu Mengjia and had requested that all decisions on admissibility be subject to its review, there had never, in actual fact, been any divergence of opinion on an admissibility decision.

68. The CHAIRMAN said it appeared that the Committee wished to amend new paragraph 2 to provide for the adoption of decisions on inadmissibility by unanimity and those on admissibility by a majority and for the composition of the working group to be not less than three and not more than five members, and that an informal procedure should be followed whereby implementation of a decision of inadmissibility would be deferred for two sessions. Accordingly, he took it that the Committee wished to adopt the amended heading and paragraph 1; new paragraph 2, as orally amended, paragraphs 3 and 4, as amended; and new paragraph 5.

69. It was so decided.

Rule 106 (Establishment of a working group and designation of rapporteurs for specific complaints)

70. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) suggested that, since the working group being established in paragraph 1 of the rule would be recommending both decisions on admissibility and findings on the merits of the case, the Committee might wish to amend the paragraph to add the latter.

71. It was so decided.

72. Mr. MAVROMMATIS proposed replacing in paragraph 2 the clause "The Working Group shall not comprise more than five members" by the clause "The Working Group shall comprise not less than three and not more than five members". The purpose was to avoid a split decision between only two members.

73. The CHAIRMAN said that, accordingly, the majority in the case of a three-member working group would be two to one.

74. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) pointed out that in the case of a three-member working group, a quorum would be three members, not two.

75. Mr. CAMARA suggested that something might be said about the idea of geographical representation in the working group as in the Committee.

76. The CHAIRMAN said that, although it was the Committee's practice to observe geographical representation, he did not think it necessary to say so specifically in the rules of procedure.

77. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that, while the current membership of the Committee reflected a good geographical distribution, that might not always be the case. A rule about geographical representation might therefore be impracticable, as had been the experience of the Human Rights Committee for several years.

78. Mr. CAMARA asked what was the term of each working group.

79. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that the Committee might wish to follow the practice of the Human Rights Committee, which changed the membership of the working group at each session, although that was not indicated in its rules of procedure.

80. The CHAIRMAN said that he thought it would be useful to specify the fact in the Committee's rules of procedure by adding a sentence at the end of paragraph 2 to read: "Members of the working group shall be elected from amongst the membership of the Committee by the Committee at every session."

81. The Chairman's additional sentence was adopted.

82. Mr. RASMUSSEN said that he was very pleased to learn that the working group would be able to meet before the autumn session as well as before the spring session.

83. The CHAIRMAN said he took it, therefore, that the Committee wished to adopt the amended heading of rule 106, paragraphs 1 and 2, as orally amended, and amend paragraph 3.

84. It was so decided.

Rule 107 (Conditions for admissibility of complaints)

85. The CHAIRMAN drew attention to the change in the heading and the fact that paragraph 2 of current rule 107 had been deleted, as had subparagraph (a) of paragraph current 1, which would become the sole paragraph of the revised text. Subparagraphs (a) to (e) of the amended text corresponded to subparagraphs (b) to (f) of the earlier text, and there was a new subparagraph (f) in the amended text.

86. Ms. GAER proposed deleting the phrase "in writing" at the end of subparagraph (a) of the amended text, in order to cover cases where the victim was unable to communicate in writing.

87. Ms. Gaer's proposal was adopted.

88. The CHAIRMAN said he took it that the Committee wished to approve the heading of rule 107, the amended chapeau of the sole paragraph, subparagraph (a) as orally amended, amended subparagraphs (b) to (e) and new subparagraph (f).

89. It was so decided.

New rule 108 (Interim measures)

90. The CHAIRMAN said that the Working Group had recommended an entirely new rule, consisting of five paragraphs, on interim measures.

91. Mr. de ZAYAS (Office of the United Nations Higher Commissioner for Human Rights) recalled that, when creating the post of Rapporteur for New Complaints under rule 98, the Committee had decided to assign to him also the function of requesting interim measures of protection. The Committee might therefore wish to amend paragraph 1 of the new rule by replacing the phrase "rapporteur appointed by the Committee for that purpose" by the phrase "the Rapporteur for New Complaints appointed under rule 98".

92. Mr. MAVROMMATIS said that, in view of the urgency of requests for interim measures, the Committee should envisage having an alternate to such a rapporteur, who would be able to deal immediately with a case in the absence of the Rapporteur for New Complaints. He therefore proposed amending Mr. de Zayas' suggestion to read "the Rapporteur(s)".

93. The Secretariat suggestion, as amended by Mr. Mavrommatis, was adopted.

94. Mr. EL MASRY said that - as formulated in current rule 108, paragraph 9 - it was logical to state immediately that a request for interim measures did not imply a determination of the admissibility or merits of a complaint. That idea was currently expressed in new paragraph 3, and he saw no benefit in separating the two elements.

95. Mr. CAMARA said that it should be stated explicitly in new paragraph 3 that the State party would be so notified at the time the request for interim measures was sent to it.

96. The CHAIRMAN proposed reversing the order of new paragraphs 3 and 2 in order to establish the logical sequence that would satisfy Mr. El Masry. The Secretariat might then add a phrase along the lines suggested by Mr. Camara to what would become new paragraph 2.

97. The Chairman's proposal was adopted.

98. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that, since the Committee had established a Rapporteur for New Complaints in rule 98 and had joined the two functions in new rule 108, paragraph 1, there was no longer a separate Rapporteur for Interim Measures. Consequently, new paragraph 5 should simply read "to act as rapporteur(s) with reference to specific cases".

99. Mr. YU Mengjia drew attention to the last sentence of new rule 114, paragraph 1, which stated that the rapporteurs for follow-up on findings would be responsible for monitoring compliance with the Committee's requests for interim measures. He wondered whether that would indeed be so.

100. The CHAIRMAN, supported by Mr. MAVROMMATIS, said that the rapporteur responsible for interim measures should be the one responsible for monitoring compliance.

101. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) suggested that the Committee might wish to insert a new paragraph 5 to read: "The Rapporteur(s) for New Complaints shall also be responsible for monitoring compliance with the

Committee's requests for interim measures." The last sentence of new rule 114, paragraph 1, would then be deleted in due course and paragraph 5 of the draft text would be renumbered as paragraph 6.

102. It was so decided.

103. The CHAIRMAN said he took it that the Committee wished to adopt the heading of rule 108, new paragraphs 1 and 2 as orally amended, and new paragraphs 3, 4, 5 and 6.

104. It was so decided.

New rule 109 (Additional information, clarifications and observations)

105. The CHAIRMAN said that paragraphs 1 to 4 and 6 to 7 of the draft text were completely new formulations added to the text of what had formerly been rule 108. Paragraph 5, slightly amended, was the former paragraph 1 of rule 108. Former paragraphs 3, 7 and 8, slightly amended, had become paragraphs 8, 9 and 10 of the new text and the other former paragraphs had been deleted.

106. Mr. EL MASRY said that new paragraph 2 was unclear. The first sentence said that the State party would be allowed six months within which to comment on the admissibility and the merits of a complaint, whereas the second sentence stated that, where a State party had been asked to submit a written reply relating only to the question of admissibility, it still had six months to comment on both admissibility and merits.

107. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that the language of the paragraph had been taken directly from the rules of procedure of the Human Rights Committee, which in 1996 had felt that, in order to save time, it would do away with the two separate phases of reviewing communications and would deal wherever possible with admissibility and the merits simultaneously. The second sentence was meant to encourage States parties to address both aspects at once. Occasionally, however, a State party had insisted on continuing to comment separately on admissibility only, because it deemed the case to be clearly inadmissible. In any case, the time available to the State party for its response to a complaint was six months in all.

108. Mr. EL MASRY proposed, accordingly, that the phrase "within six months" should be added to the end of new paragraph 1 after the words "a written reply".

109. It was so decided.

110. Mr. GONZÁLEZ POBLETE said that the time period of six months seemed to him too inflexible, given the intersessional time constraints on the Rapporteur for New Complaints who was to submit complaints to the plenary Committee as soon as possible, namely, at the session following its receipt or at the subsequent session.

111. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that, if the Committee did not set a guideline of six months for all replies, States parties might complain that they were not receiving equal treatment, even though some cases were obviously more complicated than others.

112. The CHAIRMAN said he took it that the Committee wished to approve new paragraph 2 in principle but to ask the Secretariat to reformulate it more clearly.

113. It was so decided.

114. The CHAIRMAN suggested that the words "or may not" be deleted from the second sentence of paragraph 3. He also suggested inserting the words "or the Rapporteur for New Complaints" at the beginning of the same sentence, after the words "The Committee".

115. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that, in the Human Rights Committee, there were a few States which insisted on separating the examination of feasibility from that of merits, a situation that would be handled by the Rapporteur for New Complaints.

116. Mr. GONZÁLEZ POBLETE proposed that, in the last line but one of paragraph 3, the words "or the Working Group, as appropriate," should be inserted after the word "Committee" because it was within the competence of the Working Group to approve admissibility.

117. The CHAIRMAN said he fully agreed with that proposal.

118. The proposal was adopted.

119. Mr. EL MASRY asked whether the Committee currently fixed the deadline for the submission of information by the States parties.

120. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that the current practice was to grant six months which was very generous. In the future, the Committee might wish to grant only four months for an additional submission on the merits. The current practice was that States parties were asked to respond within six months in two situations: on initial transmittal and where there was a decision declaring a case to be admissible and requesting a submission on the merits. On the other hand, when the State party received comments from the complainant and was asked for a response, the practice was to grant it two months. He wondered whether that practice should be reflected in the rules of procedure.

121. Mr. CAMARA proposed a simpler formulation for paragraph 4: "Following a separate decision on admissibility … the Committee shall fix a deadline for the State party to reply on the merits", thus avoiding any reference to a case-by-case basis. The deadline of six months was too long and should be reduced.

122. Mr. MAVROMMATIS said that there was an inconsistency between paragraph 3, which stated that an application by the State party for consideration of admissibility only "shall not, in principle, extend the period of six months …" and paragraph 4, which stated that "the State party shall be given appropriate time to reply".

123. The CHAIRMAN suggested that paragraph 4 be deleted.

124. It was so decided.

125. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that, under paragraph 3, if a decision had been taken to separate the consideration of admissibility and merits, it stopped the clock until the Committee had taken a decision on admissibility. The original two months should be discounted and four months would then remain for a State party to make its additional submission on the merits. Otherwise a State party insisting on a prior decision on admissibility would receive much more time for its response than one which had made the effort to respond to both simultaneously.

126. The CHAIRMAN said that a State party usually wanted to obtain a decision as quickly as possible because almost all cases were related to article 3. However, he agreed that there should be an overall maximum of six months.

127. Mr. CAMARA said that the six-month deadline should be deleted. It only complicated matters.

128. The CHAIRMAN said he noted that most Committee members were in favour of a maximum of six months, with no additional discretion being given. He asked the Secretariat to reformulate paragraph 3 accordingly.

129. Since there had been no comments regarding paragraphs 5, 6 and 7, he assumed they were acceptable to the Committee.

130. Paragraphs 5, 6 and 7 were adopted.

131. The CHAIRMAN said that the specific mention of domestic remedies at the end of paragraph 8 was unnecessary and should be deleted.

132. It was so decided.

133. Paragraph 8, as orally amended, was adopted.

134. Mr. GONZÁLEZ POBLETE said, with regard to the Spanish text of paragraph 9, that it should be in the imperative form: if the State party wished to dispute the complainant's contention that all available domestic remedies had been exhausted, it had to provide its justification in a single document.

135. Mr. MAVROMMATIS said he wondered whether the State party should not be given the opportunity to challenge the request for or continuing validity of interim measures.

136. The CHAIRMAN said he agreed that there should be some provision for States to argue that the conditions justifying interim measures no longer prevailed and, logically, such a provision should appear in rule 108. He asked the Secretariat to modify the text to cover that point.

137. Ms. GAER said that, although she understood that the Committee was trying to achieve a more rigorous time frame and that most complaints related to article 3, it was beginning to receive more cases that did not come under article 3 and she wondered whether the provision might not be unduly limiting.

138. The CHAIRMAN said he thought that a six-month limit was more than adequate. The Committee met only twice a year and there was consequently a need for greater discipline on the part of the States parties.

139. The Committee had thus decided to adopt new rule 109, after deletion of paragraph 4 and oral amendments to several paragraphs, but had asked the Secretariat to reformulate paragraphs 2, 3 and 9. The adoption was thus provisional.

New rule 110 (Inadmissible complaints)

140. The CHAIRMAN said that new rule 110 differed from the existing rule 109 only in the change of the word “communication” to “complaint” and the words “author of the communication” to “complainant”.

141. Mr. MAVROMMATIS proposed adding the words “or the Working Group” after the words “the Committee” in the first line of paragraph 2 but not in the second line. The word “documentary” in the fourth line of the same paragraph should be deleted, because evidence was sometimes exclusive to the State party.

142. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that that proposal would take the procedure beyond that of the Human Rights Committee, whereas paragraph 2 as it stood allowed the Committee to review a decision declaring a case inadmissible and to re-register the case. He asked whether the Committee envisaged reviewing the decision on admissibility if there was a reason for admissibility other than the question of exhaustion of domestic remedies. The Human Rights Committee did not make such reviews.

143. Mr. EL MASRY said that the addition of the words “or the Working Group” would establish a procedural rule and the Committee would then be able to review only decisions on inadmissibility.

144. The CHAIRMAN said he believed that the Committee had already decided not to write that into the rules of procedure.

145. Mr. MAVROMMATIS said that the previous instance related to the review of a decision by the Working Group which the majority of the Committee felt was wrong and wished to correct. However, that covered only cases where the Working Group had correctly decided that there was, for example, no exhaustion of domestic remedies but, in the meantime, the complainant had exhausted domestic remedies and approached the Committee. In the current instance, there was a correct decision on inadmissibility, whether by the Committee or the Working Group, and the matter had, if necessary, been remedied. The complainant would then submit documentary or other evidence to the Committee which was deemed to be admissible.

146. Mr. EL MASRY said that there was no need to add the words "or the Working Group", as the decisions of the Working Group would in any case be endorsed by the Committee.

147. The CHAIRMAN pointed out that there would be no formal endorsement of Working Group decisions. The Working Group could decide that a case was inadmissible and the complainant could then point out that certain alleged remedies did not exist in the State party, sending the evidence to the Working Group. The Working Group would then examine the evidence and either agree that the case was admissible after all or reject the evidence and declare it inadmissible. If the Working Group decided that the case was admissible, there would be no problem because it would come before the Committee. If the Working Group decided that it was inadmissible, the members of the Committee would have all the material available for the next two sessions and would have an opportunity to discuss the case. The whole of paragraph 2 might, perhaps, be deleted or else it should simply stipulate that the Working Group would have the right to review its earlier decision in the light of new evidence.

148. Mr. MAVROMMATIS said that the situation currently under discussion was that in which a negative decision had been taken on the admissibility of a case. Counsel then came back with additional evidence that proved the decision to be wrong and asked for a review of the case. The decisions covered were those that had proved incorrect in the light of the new material supplied. The Working Group would review its earlier decision, but there would be no automatic review of the case by the Committee.

149. Mr. RASMUSSEN said that paragraph 2 should not be deleted as it was good for the Committee to have all the documentary evidence available and it also contained useful instructions for the complainant. The paragraph should contain references to the Committee and the Working Group in its first and second lines alike.

150. The CHAIRMAN said he took it that the Committee wished to adopt Mr. Rasmussen's proposal.

151. It was so decided.

152. The CHAIRMAN said he took it that the Committee wished to adopt new rule 110, as orally amended.

153. It was so decided.

The meeting rose at 6 p.m.