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COMMITTEE AGAINST TORTURE

Twenty-sixth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 479th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 15 May 2001, at 4.55 p.m.

Chairman: Mr. BURNS

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.479.

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The public part of the meeting was called to order at 4.55 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN, speaking as a member of the working group that had been established at the previous meeting to submit proposals for amendments to the Committee's rules of procedure, requested the secretariat to assist the working group in its task by providing comparative materials on the rules of procedure of other human rights treaty bodies and on any amendments they had recently considered or adopted.

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION (agenda item 6) (continued)

Preliminary discussion of a draft general comment on interim measures requested by the Committee under article 22 of the Convention (CAT/C/XXVI/Misc.11)

2. Mr. CAMARA introduced the background paper (CAT/C/XXVI/Misc.11) that he had prepared at the Committee's request on interim measures requested by the Committee, exercising its competence under article 22 of the Convention, to avoid possible irreparable damage to a person or persons who claimed to be victims of an alleged violation of the Convention. The paper, which was to serve as the basis for a general comment by the Committee on the subject, was based on cases in which the Committee had requested interim measures either when considering the admissibility of communications in accordance with rule 108, paragraph 9, of its rules of procedure (CAT/C/3/Rev.2) or when considering them on the merits under rule 110, paragraph 3.

3. The CHAIRMAN invited Mr. Camara to introduce the paper section by section.

Preamble

4. Mr. CAMARA said that the purpose of the preamble was to address challenges to the legitimacy of the Committee's requests for interim measures, since the rules of procedure had been adopted by the Committee, and States parties might feel that they were bound only by the provisions of the Convention itself. He maintained that the two were inseparable inasmuch as article 18, paragraph 2, of the Convention endowed the Committee with competence to establish its own rules of procedure.

Section I. The principle underlying interim measures

5. Mr. CAMARA said that the Committee's rules of procedure did not specify the kind of interim measures to be taken in order to prevent irreparable damage resulting from a violation of the Convention. He had therefore reviewed the Committee's practice, which was often based on individual decisions by the rapporteurs for the communications concerned, in an attempt to identify a general rule.

6. The CHAIRMAN suggested that the words "probability of irreparable damage" in subparagraph 3 of the first paragraph of section I should be amended in the light of the rules of procedure to read "possibility of irreparable damage".

7. It was so decided.

8. Ms. GAER suggested that it was unnecessary to identify countries or cases by name when citing the Committee's jurisprudence. Similarly, it might be advisable to consider whether references to the general comments of another body should be included in the text, which should be carefully revised to ensure that it was gender-neutral.

9. Mr. EL MASRY drew attention to the first sentence of the second paragraph on page 3 of the English text, which read in part "As regards article 3 itself, the Committee … is required to rule on a violation …". He wished to point out, however, that when the Committee requested interim measures, it was not ruling on a violation.

10. The CHAIRMAN agreed that in view of the wording of the last sentence of rule 108, paragraph 9, the language of the second paragraph on page 3 of the English version of the background paper was infelicitous, since the violation in question consisted of a State party's sending the author of a communication back to a State where he or she might be tortured, and not any subsequent violation by the latter State, which was the act of torture. He would prefer to have the phrase "there is a strong probability" replaced with the phrase "there are substantial grounds", because that was the language used in article 3 of the Convention.

11. Mr. EL MASRY asked whether the last sentence of the same paragraph implied that the Committee must rule on admissibility before requesting interim measures.

12. The CHAIRMAN noted that rule 108, paragraph 9, started with the words "In the course of the consideration of the question of the admissibility of a communication …"; it did not say "having decided that the case is admissible". It was thus clear that the Committee had competence first to consider and rule on admissibility and then to rule on the substantive issues. The wording of the final sentence of the second paragraph on page 3 of the English version was therefore logical and correct.

13. Mr. MAVROMMATIS said that he was worried by the reference in that sentence to automatic recourse, because the question of automaticity had caused difficulties in the Human Rights Committee. He was concerned that an application for interim measures might be used simply to prolong a person's stay in a particular country, and indeed the case he had presented earlier that day had been a prime example of such a manoeuvre.

14. The CHAIRMAN noted that the Committee usually erred on the side of caution. Accordingly, in view of the language of article 3 and the impact on the author of a communication of a wrong decision by the Committee, the text should indicate that the Committee would consider the issue of its competence very seriously.

Section II. Implementation

15. Mr. CAMARA said that most communications referred to cases involving asylum-seekers who would face torture if their request for interim measures was rejected. Rapporteurs recommended such measures in 80 per cent of all cases, and he had listed the circumstances in which they did so. He had then enumerated the conditions in which the Committee did not request interim measures.

16. The CHAIRMAN questioned the translation of the last sentence on page 4 of the English version. He thought that line 7 on page 5 really referred to States that had made the declaration provided for in article 22 of the Convention, and not merely to those that were parties to the Convention itself. He was disquieted by the fact that the Committee did not have an equivalent to a non-substantiation provision to rely on when considering its competence to admit a case and call for interim measures; it merely had formal requirements. Apparently it was not an abuse of the Committee's process if a person submitted a claim without substance. The Human Rights Committee had introduced a non-substantiation clause in its rules of procedure in order to deal with such eventualities, and it might be advisable for the Committee against Torture to do likewise, so that a rapporteur could at an early stage drop a case that was too weak to be admissible. As the rules of procedure stood, unless a case failed one of the four formal requirements for admissibility, it could not be deemed manifestly inadmissible.

17. Mr. CAMARA, replying to a question from Mr. EL MASRY, said that the four grounds for rejecting interim measures listed on page 5 were not exhaustive, but merely a summary of precedents to date.

18. Mr. EL MASRY suggested the addition of the words "such as" in the introductory phrase at the top of page 5.

19. Mr. CAMARA proposed that the seventh line on page 5 should read: "When the State to which the author is to be expelled is a party to the Convention, or is a party to the Convention and has made the declaration provided for in article 22".

20. Mr. RASMUSSEN pointed out that Turkey was one of the countries that had made a declaration under article 22.

21. The CHAIRMAN said that it was the Committee's practice to regard a State's declaration in favour of article 22 as a factor militating against interim measures. However, if the country concerned had a bad human rights record, the rapporteur would recommend the adoption of interim measures.

22. After a discussion in which Mr. RASMUSSEN, Mr. CAMARA and Mr. MAVROMMATIS took part, Mr. GONZÁLEZ POBLETE observed that some countries which systematically used torture had signed the Convention. Thus their signature was not synonymous with good conduct, and it was not a factor which should be taken into account when the Committee decided whether to request interim measures.

23. Mr. CAMARA summarized section II.B of the background paper, which outlined how the Human Rights Committee and the International Court of Justice approached the question of interim measures.

Section III. Specific problems encountered by the Committee

24. Mr. CAMARA said that despite countries' complaints that the Committee's request for interim measures amounted to interference in their immigration policy, they usually granted a stay of proceedings.

25. The CHAIRMAN said that the section was useful because it helped the Committee to understand countries' reactions to its requests.

26. Ms. GAER said that the Committee had succeeded in presenting the concerns of authors of communications and States parties in actual communications in a much more neutral and balanced fashion than was done in the text before the Committee.

Section IV. Improvements

27. Mr. CAMARA said that when a State made a declaration under article 22, it accepted that an external body might take decisions it would not like. There was no point in having a Convention if the Committee was always supposed to condone the action of States. An effort should be made to improve communication with States, since they appeared willing to accept interim measures whenever an explanation of the reasons for them was provided.

28. The CHAIRMAN said that more careful consideration would have to be given to the time limit for States parties' replies to a request for information.

29. Mr. EL MASRY said that, in his opinion, the practice suggested by Denmark in the second paragraph of section IV was not feasible, and he urged that the paragraph should be redrafted.

The meeting rose at 6 p.m.