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on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Sixty-fifth session
22 March - 9 April 1999

DECISIONS

Communication N° 830/1998

<u>Submitted by:</u>	Christopher Bethel (represented by Ashurst Morris Crisp a law firm in London)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Trinidad & Tobago
<u>Date of communication:</u>	25 August 1998
<u>Prior decisions:</u>	- Special Rapporteur's rule 86/91 decision, transmitted to the State party on 17 September 1998 (not issued in document form)
<u>Date of present decision:</u>	31 March 1999

[ANNEX]

* Made public by decision of the Human Rights Committee

ANNEX*

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

- Sixty-fifth session -

concerning

Communication N° 830/1998**

Submitted by: Christopher Bethel
(represented by Ashurst Morris Crisp, a law
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Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 25 August 1998

Prior decisions: - Special Rapporteur's rule 86/91 transmitted
to State party on 17 September 1998
(not issued in document form)

The Human Rights Committee, established under article 28 of the
International Covenant on Civil and Political Rights,

Meeting on 31 March 1999

Adopts the following:

*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden, Mr. Abdallah Zakhia.

**The text of an individual opinion by two Committee members is appended to the present document

Decision on admissibility

1. The author of the communication (dated 25 August 1998) is Christopher Bethel, a Trinidadian citizen, born in 1974 and currently awaiting execution in Port-of-Spain's general penitentiary. He claims to be a victim of a violation of article 26 of the International Covenant on Civil and Political Rights by Trinidad & Tobago. In this context, he also invokes articles 6, 7, 9, 10 and 14 of the Covenant. He is represented by Ashurst Morris Crisp, a law firm in London, United Kingdom.

The facts as submitted by the author

2.1 The author was convicted for murder and sentenced to death on 26 January 1996. His appeal was dismissed by the Court of Appeal on 28 November 1996. His application for leave to appeal to the Privy Council was dismissed on 4 December 1997. With this, all available domestic remedies are said to have been exhausted.

2.2 On 19 December 1997, a petition on behalf of the author was lodged with the Inter-American Commission on Human Rights (IACHR), in accordance with the guidelines issued by the State party in October 1997, which set out a strict timetable to be adhered to by applicants. The author instructed his counsel to lodge an application with the United Nations Human Rights Committee, in case his petition to the IACHR would be unsuccessful.

2.3 On 26 May 1998, the State party gave notice denouncing the Optional Protocol. It also issued new instructions setting the time periods which should apply to and the procedure for applications made by or on behalf of prisoners under sentence of death between 26 May 1998 and the date that the denunciation would become effective, 26 August 1998. Counsel notes that the author cannot present a communication to the Human Rights Committee after 26 August 1998.¹

2.4 Counsel notes that in accordance with the State party's instructions, the IACHR should adopt its decision with regard to the author's complaint by 2 September 1998. Counsel notes that by that time the denunciation will have become effective and his client will then no longer have the right of recourse to the Human Rights Committee, despite having had since October 1997 a reasonable expectation to pursue his right of access to the Human Rights Committee.

The complaint

3. Counsel claims that the actions taken by the State party through the denunciation of the Optional Protocol thereby frustrating his client's

¹Effective 26 August 1998, Trinidad & Tobago re-acceded to the Optional Protocol, with a reservation to the effect that "the Human Rights Committee shall not be competent to receive and consider any communications relating to any prisoner who is under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any matter connected herewith." See the Committee's annual report to the General Assembly 1998, A/53/40, chapter I, endnote 2.

legitimate expectations constitute a breach of article 1 of the Optional Protocol and of article 26 of the Covenant. He requests the Committee to register the communication for examination under the Optional Protocol so as to guarantee the author's right to petition the Committee if his application to the IACHR were to be rejected.

State party's observations and counsel's comments thereon

4. By submission of 12 October 1998, the State party informs the Committee that the author's case is still under examination by the IACHR. Moreover, the author's counsel has submitted a further application for leave to appeal to the Judicial Committee of the Privy Council. Accordingly, the State party argues that the communication is inadmissible under article 5, paragraph 2 (a) and (b).

5.1 In his reply to the State party's submission, counsel notes that his complaint to the IACHR does not concern the question put before the Committee that the State party has denied his client right of access to the Human Rights Committee. He states that the issue of legitimate expectation is not an issue before the IACHR.

5.2 Counsel confirms that he appeared before the Privy Council on the author's behalf in July and October 1998, but submits that the issue before the Privy Council does not relate to the matter raised in his communication to the Human Rights Committee.

6.1 By further submission of 9 February 1999, the State party explains that following the dismissal of the author's application for leave to appeal to the Judicial Committee of the Privy Council in December 1997, the author had the choice of submitting an application to the IACHR or to the United Nations Human Rights Committee. He chose an application to the IACHR. The State party rejects the allegation that it prevented him from petitioning the Human Rights Committee, and states that it was the author's own choice, for tactical reasons, to petition the IACHR at that time.

6.2 The State party argues that the splitting of petitions between two human rights bodies is an abuse of the right of submission and a ground for inadmissibility under article 3 of the Optional Protocol. In the opinion of the State party, the Committee should not condone a situation where a petitioner seeks to submit some complaints to the IACHR and reserve others for the Committee. When the author submitted his application to the Committee, his petition was still under examination by the IACHR, and the State party thus maintains that his communication to the Committee is inadmissible under article 5, paragraph 2(a), of the Optional Protocol. The State party rejects the suggestion that the author has a right to petition the Committee once his petition to the IACHR is determined. In this connection, the State party notes that the American Convention on Human Rights provides that a communication shall be inadmissible if it is substantially the same as one previously studied by another international organisation.

6.3 The State party further submits that the Judicial Committee of the Privy Council granted the author special leave to appeal on 22 October 1998, and remitted the author's case to the Court of Appeal of Trinidad & Tobago. The Privy Council further directed that if the author's conviction is affirmed by the Court of Appeal, the author is entitled to petition the Judicial Committee.

On this basis, the State party argues that domestic remedies have not been exhausted.

7.1 In his comments, counsel for the author contests the State party's argument that the communication is inadmissible because the author has an application before the IACHR. He reiterates that the matter brought before the Committee is the State party's denial of the author's right to petition the Human Rights Committee following the determination of his claim by the IACHR. Counsel recalls that the issue arises from the State party's unilateral decision, some five months after the author's application to the IACHR, to denounce the Optional Protocol.

7.2 Likewise, counsel submits that the complaint raised by the communication to the Committee does not relate to any issue raised before the Privy Council. From the reasons given by the Judicial Committee of the Privy Council allowing the appeal, it appears that the question before it was alleged misbehaviour of counsel at the trial. Counsel requests the Committee, if it were to deem the communication nevertheless inadmissible, to suspend the consideration of the communication pending resolution of the appeal process.

Issues and proceedings before the Committee

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that counsel argues that the author's right to access to the Committee has been violated by the State party since, if the IACHR were to reject the author's claim, he can no longer petition the Committee due to the State party's denunciation of the Optional Protocol. The Committee considers, however, that the right claimed by the author is not a right protected by the Covenant. Accordingly, the communication is inadmissible under article 3 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the State party and the author's counsel.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently also to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

A. Individual opinions by Committee Members Fausto Pocar and Martin Scheinin (concurring)

Although we agree with the conclusion that the communication is inadmissible, we disagree with the majority in relation to the reasons for inadmissibility. By way of a letter dated 17 September 1998 the State party was informed, in accordance with rule 91 (3) of the Committee's rules of procedure, that if the State party wished to challenge the admissibility of the communication, it should do so within two months, i.e. not later than 16 November 1998. In a submission of 16 October 1998, the State party did challenge the admissibility of the communication on the two grounds specified in article 5, paragraph 2, of the Optional Protocol, namely (a) simultaneous consideration of the same matter under another procedure of international investigation or settlement, and (b) non-exhaustion of domestic remedies. It was only on 9 (and 17) February 1999 that the State party invoked a third ground for inadmissibility, namely abuse of the right of petition (article 3 of the Optional Protocol), without however, adequately substantiating the abusive nature of the communication.

In our opinion the communication should have been declared inadmissible on one of the grounds initially invoked by the State party, namely non-exhaustion of domestic remedies. As a consequence and in accordance with rule 92(2) of the Committee's rules of procedure, the inadmissibility decision should have been made subject to a possibility of review when the obstacle for inadmissibility has been removed. Likewise, the Committee's request for interim measures of protection issued pursuant to rule 86 of the Committee's rules of procedure should have been upheld. This course of action would have made it clear to the author, his counsel and the State party that the State party's withdrawal and reaccession accompanied by reservation, of the Optional Protocol, dated 26 May 1998 and effective 26 August 1998, does not constitute an obstacle for the future consideration of the author's case by the Committee.

In spite of what has been said above, it must be emphasized that the course of action decided by the Committee does not entail a decision that the author would be deprived of access to the Committee under the Optional Protocol, should he wish to submit a new individual communication in order to prevent his execution. Indeed, it is the Committee's position stated in its annual report (see footnote no. 1 of the inadmissibility decision), that the Committee will deal with the validity and legal effect of the reservation by Trinidad and Tobago in due course and in the concrete context of such individual cases related to the death penalty that have been submitted after 26 August 1998. Contrary to what seems to be assumed by the author's counsel (see para. 2.3), the reservation in question cannot be seen to bar, in abstracto, access by the author or any other prisoner under the sentence of death, to the Committee in its functions under the Optional Protocol.

Fausto Pocar [signed]

Martin Scheinin [signed]

[Done in English, French and Spanish, the English text being the original version. Subsequently also to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]