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COMMITTEE AGAINST TORTURE

Twenty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 487th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 13 November 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.487/Add.1.

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

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

1. The CHAIRMAN introduced Mr. Scheinin, a member of the Human Rights Committee, who, as Special Rapporteur for New Communications, had come to explain the duties which that appointment entailed and its usefulness.

2. Mr. SCHEININ (Human Rights Committee) said that he welcomed the opportunity to discuss with the members of the Committee against Torture procedural issues that were common to the two Committees and related to their consideration of communications from individuals. He took it that the Committee against Torture wished primarily to know about the practice of the Human Rights Committee with regard to its capacity under rule 86 of its rules of procedure to request a State party to apply interim measures of protection. A rule of procedure, since it was not a treaty provision, was in no way binding. However, article 28 of the International Covenant on Civil and Political Rights afforded the necessary legal basis by providing for the establishment of the Committee as the body responsible for monitoring the implementation of the Covenant; the Optional Protocol extended its competence to individual communications. The consideration of communications under the Optional Protocol gave rise to "Views", which were interpretations vested with authority deriving from article 28 of the Covenant. That authority extended also to requests for interim measures of protection. Thus far, most of the cases in which the Human Rights Committee had made a request for interim measures had been capital cases, where the Committee had asked the State party to stay execution of the death sentence as long as the communication was under consideration. A lesser number had been cases involving the expulsion of persons who risked capital punishment, torture or cruel treatment or relating to complaints on other grounds - family reasons, for example. Currently, the Committee was considering a case relating to the destruction of a work of art. A greater number of requests had been based on the right of minorities - ethnic, religious or linguistic - to their own cultural life (article 27 of the Covenant) and the aim had generally been to prevent an activity that might cause irreparable damage to the natural environment essential to a minority. Mention should also be made of rule 91 of the rules of procedure, under which the Committee regularly addressed a note verbale to the State party asking it to provide information; in some cases, the Committee was concerned about a particular fact, for example the state of health of the incarcerated author of a communication, when it would ask the State party to see to it that the person received proper care.

3. As for compliance with requests made pursuant to rule 86, the response of States parties had thus far been generally positive, even in the case of States subject to the jurisprudence created by the ruling of the Judicial Committee of the Privy Council in the Pratt and Morgan v. the Attorney-General of Jamaica (1994) case that the holding of a convicted person on death row for more than five years constituted inhuman or degrading treatment. Nevertheless, there were some exceptions, and the first capital case in which the State party had disregarded the Committee's request for a stay of execution was the Piandiong et al. v. the Philippines case. That case had led the Committee to define its position on the application of rule 86 from a legal

standpoint. It had determined that a State party which executed a convicted person while his or her case was under consideration by the Committee was committing a grave breach of its obligations under the Optional Protocol, as distinct from a violation of a substantive provision of the Covenant, the Committee being of the opinion that such a breach ran counter to the purpose of the Optional Protocol.

4. Regarding the application of interim measures the Human Rights Committee had only one Special Rapporteur for New Communications, but nothing in the rules of procedure prevented it from having several. The Special Rapporteur had the task of making any request to the State party pursuant to rule 86 of the rules of procedure before an admissibility decision was taken, and that practice had the dual advantage of ensuring consistency in the application of rule 86 and of proceeding rapidly in urgent cases. The Chairperson of the Human Rights Committee could perform the same task when, for example, an admissibility decision had already been taken or the communication was directed against the country of which the Special Rapporteur was a national. Another practical advantage of the institution of Special Rapporteur for New Communications was that there was no need to justify the requests for interim measures of protection. The Special Rapporteur had full latitude in making such requests and, where necessary, withdrawing them. Lastly, it was important to note that a request for interim measures pursuant to rule 86 of the rules of procedure could be made even if domestic remedies had not been exhausted, the classic cases being those involving expulsions. The request in such cases was a conditional one.

5. The CHAIRMAN thanked Mr. Scheinin for his statement. He observed that in the Committee against Torture the rate of compliance with requests for interim measures of protection had likewise been high, but there had nevertheless been some cases where the State party had refused to comply. He would therefore like to know what the legal consequences of such a refusal were in the framework of the Human Rights Committee. Did it constitute a violation of the provisions of the Covenant as such?

6. Mr. SCHEININ (Human Rights Committee) said that in the Piandiong et al. v. the Philippines case the Human Rights Committee had taken the position that the State party's non-compliance with the request for a stay of execution constituted a grave breach of its international obligations under article 1 of the Optional Protocol. In that particular case, the consequence of non-compliance had been the "irreparable damage" referred to in rule 86 of the rules of procedure, but the conclusion could be more nuanced in cases not involving capital punishment.

7. The CHAIRMAN noted that the Human Rights Committee had not been able to take a firm position in every case in which a State party had refused to act on its request, but he understood perfectly why it had chosen the expression "grave breach" in the case of the execution of the person on death row. The Committee against Torture could only endorse the reasons given - consistency and speed - to explain the usefulness of having a special rapporteur. Furthermore, he himself never gave explanations when addressing requests for interim measures to States parties.

8. Mr. MAVROMMATIS said that it would be desirable to avoid making such requests too systematically to States parties because some of them would be likely, especially for the sake of shortening the proceedings, to denounce the Optional Protocol, as had happened in the past. Ways had to be found to reconcile that imperative with the need to avoid having to justify the requests for interim measures.

9. The CHAIRMAN pointed out that the Committee against Torture was going to make certain amendments to its rules of procedure that would allow it to go beyond the four current admissibility criteria and not make it automatic to send requests for interim measures to States parties pursuant to the rules of procedure.

10. Ms. GAER observed that the Committee against Torture had availed itself of the possibility of requesting interim measures primarily in the case of communications alleging a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that those measures were always of a preventive nature. She asked to what extent some States parties were justified in complaining that when interim measures were granted as a matter of course it prevented their authorities from conducting their policies effectively.

11. Mr. SCHEININ (Human Rights Committee) said that when a State had disregarded a Human Rights Committee request for interim measures under rule 86, the case had generally been a capital case, where the person on death row had been executed even though the Committee had asked for a stay of the sentence. In such instances, the Committee made that fact public at a plenary meeting and reflected it in a separate decision in its annual report. The case remained pending so that the Committee could in its final Views take note of a grave breach by the State of its obligations under the Optional Protocol.

12. The interim measures requested by the Human Rights Committee pursuant to rule 86 in fact always had a preventive dimension, whether it was a matter, for example, of suspending activities harmful to the environment in indigenous areas or a matter of preventing an expulsion. Cases concerning the right to life under article 6 of the Covenant were, however, somewhat special, because capital punishment was not prohibited by the Covenant; on the other hand, if a violation had already been committed in connection with such a case - for example, if the trial leading to the sentence of death had not been a fair one - that sentence in itself constituted a breach of articles 14 and 6 of the Covenant and the execution of the prisoner would then represent the gravest violation. The aim of a request for interim measures was, therefore, preventive.

13. It was true that several Caribbean countries had withdrawn from the Optional Protocol. One of them had acceded to it again with reservations, and the response of the Human Rights Committee had been that those reservations were incompatible with the purposes of the Protocol; that response had, perhaps, actually led to further withdrawals. It should be emphasized, however, that such a regrettable state of affairs had not resulted from the Committee's practice

regarding interim measures but from a complex situation in which the States involved had also been subject to the jurisdiction of the Privy Council in London, which, by its ruling in one case, had established the jurisprudence that five years on death row constituted inhuman or degrading treatment, while the Committee for its part was requesting stays of executions. The automatic application of the measures provided for under rule 86 was virtually a necessity where capital punishment was concerned, for obvious reasons. The same did not apply, in his opinion, to cases involving expulsion. In such cases, it had to be assessed whether the person concerned was in real danger of being subjected to treatment contrary to article 7 of the Covenant. The Human Rights Committee had not established whether the expulsion of a person to a country where he or she risked capital punishment fell under article 6 or article 7 of the Covenant, having decided differently according to the circumstances. He himself believed that such cases fell rather under article 7, which prohibited cruel treatment or punishment. Actually, the Human Rights Committee had thus far had very few such cases to consider.

14. Mr. MAVROMMATIS asked what the reaction of States parties had been when they had been informed of the Committee's decision that they had violated the provisions of the Optional Protocol by carrying out the death sentence.

15. Mr. SCHEININ (Human Rights Committee) said that he did not recall receiving a response from any of the States concerned. In its Views, the Human Rights Committee asked the State party to inform it within 90 days of the steps it had taken. In the absence of a response, it instructed its Special Rapporteur for Follow Up on Views to make contact with the State party to try to establish a dialogue.

16. Ms. GAER observed that a single member of the Human Rights Committee and not a working group, for example, assumed the heavy responsibility of deciding whether there was cause for requesting interim measures. What were the advantages and disadvantages of such a practice?

17. Mr. SCHEININ (Human Rights Committee) pointed out that a pre-sessional working group reviewed all draft decisions on admissibility, but the Special Rapporteur for New Communications intervened at a much earlier stage, at the moment when it became necessary to decide to register a communication, and it was generally then that a request addressed to the State party under rule 86 might be appropriate. There was perhaps a danger of continually repeating the same mistakes and showing a certain conservatism in decisions, where only certain kinds of cases could be taken up and certain solutions found.

18. Ms. GAER asked for what length of time a member of the Human Rights Committee could serve as a special rapporteur, how language problems were resolved and if geographical representation was taken into account in appointing the rapporteurs.

19. Mr. SCHEININ (Human Rights Committee) replied that the question of geographical representation had not arisen in the Human Rights Committee in that context. Language

problems, which could be very real, were resolved by the secretariat; the Special Rapporteur needed to know only the essential elements of each case, which were set out for him by the secretariat in a language at his command. A member of the Human Rights Committee could theoretically continue to serve as a special rapporteur for the duration of his term of office. In practice, the matter was reviewed every two years when the bureau of the Committee was convened, whereupon, the Special Rapporteurs for New Communications and for Follow Up on Views were appointed.

20. The CHAIRMAN observed that in the Committee against Torture each new communication was transmitted to the Chairman, who consulted the other members of the Committee about it. In appointing the rapporteur for a given communication, language considerations were taken into account, since the rapporteur often had to examine the dossier in depth. The procedure was therefore pragmatic rather than systematic, but was perhaps less effective than that of the Human Rights Committee.

21. Mr. EL MASRY asked if the same rapporteur was responsible for registering a communication and for the procedure regarding interim measures, and if he received guidelines from the Human Rights Committee.

22. Mr. SCHEININ (Human Rights Committee) confirmed that the same rapporteur decided to take up a case and to make the request for interim measures. There were no written guidelines on those matters and the rapporteurs applied the criteria set out in the Optional Protocol and the Committee's jurisprudence, which was often very extensive, although in certain cases the rapporteur had to innovate.

23. The CHAIRMAN thanked Mr. Scheinin for his invaluable contribution.

24. Mr. SCHEININ (Human Rights Committee) said that he would report back on the interesting discussion which had been held to the Human Rights Committee.

25. Mr. Scheinin withdrew.

The public part of the meeting was suspended at 3.55 p.m. and resumed at 5 p.m.

Conferences and meetings in which members of the Committee had participated

26. The CHAIRMAN proposed that members should hear the impressions that Mr. Mavrommatis, Ms. Gaer and he himself had drawn from their experiences at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Conference had been characterized by a very marked divergence between the viewpoints of States and those of non-governmental organizations (NGOs), which were defending opposite interests. The structure of the Conference itself had also been open to question. The States had held their meetings in a building situated about 500 metres from the various sites at which the

very lively discussions of the NGOs had taken place, contrasting clearly with the plenary meetings, where the representatives of States had delivered prepared statements, the real debate having been conducted in private. Conflicts between the representatives of various NGOs had soon become apparent, but he himself had not been aware of any disturbances, contrary to what had been reported in the press.

27. Regarding the participation of members of the Committee, it had to be said that no real provision had been made to involve them fully in the Conference. Mr. Mavrommatis had taken the floor in the late afternoon of the first day at a relatively marginal meeting on a subject of interest to the Committee, but no other invitation to speak had been forthcoming. It was certainly important that the Committee had been represented at the World Conference but he personally had been very disappointed at having been limited to the role of a spectator. The objectives of the Conference had been fine ones and probably in a different set of circumstances the States could have achieved results; but each group had been determined, often in a virulent and narrow way, to stand firm on its own position.

28. Mr. MAVROMMATIS said that it had been absolutely necessary to hold such a conference in view of the many manifestations of racism and xenophobia throughout the world. He recalled that parallel meetings had been held, on the fringes of the Conference, to which members of the treaty bodies as well as representatives of NGOs and national institutions had been invited. The subjects taken up at those parallel meetings had been broadly speaking very interesting but the usefulness of the meetings had unfortunately been diminished by the insufficient speaking time allowed for the members of treaty bodies, the scant notice given to their statements and a general lack of organization. His final impression then, was that any contribution which the Committee and the other treaty bodies might have made had been largely disregarded, essentially because the sole purpose of those chairing the discussions at the parallel meetings had been to set out their own concerns.

29. Ms. GAER paid tribute to the two NGOs that had organized the daily meetings devoted to the accounts of victims of torture, which had been high points of the Conference. She deeply regretted that the Final Declaration adopted at Durban had not incorporated the proposal for defining racism, racial discrimination, xenophobia and related intolerance as a scourge to be combated by all nations without exception. In the presentation which the Committee had prepared for the Conference, it had underscored that the dehumanization of others and discrimination in general created a climate conducive to acts of torture and ill-treatment. The Durban Declaration did not take up that important point, nor did it include any of the numerous concerns expressed by the Committee, aside from the question of impunity. Moreover, the Convention against Torture had not been listed among the human rights instruments which States had been invited to adhere to or ratify if they had not already done so, and that was regrettable.

30. The CHAIRMAN said that he, too, deplored that omission but the Committee would nevertheless not be deterred from pursuing its work.

31. Mr. RASMUSSEN reported that he had represented the Committee at the Meeting on the application of human rights to reproductive and sexual health organized by the Office of the

United Nations High Commissioner for Human Rights and the United Nations Population Fund. He had made a statement there on the effects of torture on reproductive health, pointing out in particular that 20 to 30 per cent of the victims of torture suffered from sexual dysfunction. The final report of the Meeting should to be issued very soon. He had also been invited to participate in the meeting held in Berlin by the Committee on Human Rights and Humanitarian Assistance established under the auspices of the Bundestag. The organizers of that meeting had invited the participants to make specific recommendations, and he had suggested that Germany should submit its third periodic report (due in October 1999) to the Committee and make the declarations provided for in articles 21 and 22 of the Convention. Since then in a welcome development, Germany had made the declarations in question.

32. The CHAIRMAN thanked the members of the Committee for their reports.

The meeting rose at 5.40 p.m.