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PERMANENT TRIBUNAL OF PEOPLES

GUIDELINES ON MEMBERSHIP AND PROCEDURES OF THE TRIBUNAL

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Credibility and authority of the Tribunal

1. The authority and credibility of the Permanent Tribunal of Peoples and the acceptability of its decisions and verdicts self-evidently depend upon the reputation and integrity of its Members, the manifest compliance of its procedures with fundamental rules of procedural fairness ("natural justice") and the conformability of its determinations with any applicable principles of international law.

2. Necessarily, coming as they do from different countries, backgrounds, professions, cultures and traditions, the Members will bring to bear upon their performance of their duties different skills, attitudes and approaches. The Tribunal is not, as such, a purely legal body, still less is it a court. Some of its Members are indeed senior judges, legal scholars or practising lawyers as the Statute of the Tribunal contemplates. However, other Members are not lawyers at all. They will be less familiar with the conventional procedures of a tribunal. Some will be more familiar with the typical procedures of other fora - lectures, meetings, conferences, seminars etc. However, the Tribunal is, as its name suggests, usually expected to follow a semi-formal procedure, certainly more formal than a lecture, meeting, conference, seminar etc. This does not require that the Tribunal should imitate slavishly the procedures of a court or become excessively rigid or formal in its procedures. Inevitably, the involvement of non-lawyers, as the Statute contemplates, will result in the creation within the Tribunal of a new institutional paradigm - avoiding stilted obsession with procedures which can sometimes blind the participant to substance. The Tribunal should not put unnecessary or unreasonable obstacles in the way of the establishment of relevant facts which are in dispute or the presentation of submissions in an efficient way upon which the Tribunal is invited to act.

3. It will be for each Member of the Tribunal to perform his or her duties as seems appropriate to his or her experience, perceptions of the problem in hand and individual consciences. These guidelines are not intended to derogate from the features of the Tribunal made up as it is, without exception, of distinguished individuals chosen for their high reputation and manifest integrity. Nevertheless it may be useful, particularly for those unaccustomed to participating in a tribunal, to have collected a number of basic guidelines which for the most part merely reflect commonsense and the fundamental rules of just procedures.

Exclusion of bias in Tribunal Membership

4. It is essential that the Members of the Tribunal approach their duties in an unbiassed way. Most, if not all of them will have a general predilection in favour of human rights, the rights of peoples to self-determination and other peoples' rights. This is merely a bias in favour of fundamental principles of international law. If, however, a Member of the Tribunal is invited to participate in a Session where he or she has already formed unshakable views on the very subject of the inquiry, which could not be altered whatever the evidence, it is the duty of that Member to decline to participate. Otherwise the decision of the Tribunal will be infected by bias. Similarly, the appearance of bias (even if actual bias does not exist) may be proper cause for self-disqualification. It is left to each Member to determine what conscience and public appearances require.

Attendances at the Sessions

5. The Tribunal operates as a collective body. Upon accepting appointment, Members accept the obligation to attend the daily Sessions of the Tribunal assigned to the particular hearing in question. It is essential that all Members without exception should be present at all times during the public sittings of the Tribunal. Otherwise, there will be an appearance (or the actuality) that justice has not been done because the Member absent has not heard all of the relevant testimony or submissions. Punctual attendance at Sessions is therefore essential.

6. In questioning of witnesses or advocates, it is desirable that Members of the Tribunal should maintain an appearance of impartiality. They should not disclose conclusions but should keep an open mind until the end of the testimony and argument.

Limiting private communications

7. During the sessions of the Tribunal it will be natural for there to be some social contact with persons involved in the hearing. But this should not go beyond pleasantries. To the extent that individual Members start gathering information for themselves, which may not come before the Full Tribunal in a formal way so that it can be tested, they run the risk of invalidating the procedure. It is essential that justice should not only be done but appear to be done.

8. This also requires that all relevant documentation provided to Members of the Tribunal in advance of the Session should be made known to the parties before the Tribunal and formally tabled during a public Session of the Tribunal. Only in this way will it be clear as to what material the Tribunal is being invited to act upon. Necessarily, because of their expertise, Members of the Tribunal will bring their own background knowledge to their tasks and this will be shared with colleagues. That is entirely permissible. But if it gets to a level of specialist knowledge which an informed lay-person might not enjoy, it is the duty of the Member of the Tribunal to disclose this specialist knowledge in a public Session. This will reveal it to the parties. It will give the parties an opportunity to comment upon it and thereby to ensure that the decision is made and the Verdict reached, on the basis of publicly disclosed material, not on the private and untested knowledge of particular Members of the Tribunal.

Particulars of the Accusation

9. It is essential that, in advance of the hearing before the Tribunal, the party making the complaint should reduce to writing, in language of precision and particularity, the precise complaints which it makes. When the decision has been made to accept the complaint, the particulars of the complaint so accepted should be served on the

party accused so that it knows precisely the case it is called upon to meet. The Tribunal should ensure that the party making the complaint adheres to the matters of which the party accused has notice and does not go beyond those matters.

The conduct of the proceedings

10. The conduct of the Tribunal is in the control of the Presiding Member. Other Members should defer to the way in which he or she conducts the proceedings. Differences about the conduct of the hearing are best resolved in private discussion which follows every public Session. The procedures will need to be adapted to the subject matter of each inquiry. In some, a less adversarial and more inquisitorial procedure may be appropriate. But where an accusation is by an identified people against another people or State, it will usually be appropriate to follow a fairly rigorous procedure.

11. A full though not necessarily *verbatim* record should be kept of the testimony, the witnesses and the exhibits which they tender as part of the record of the Tribunal. Normally the accusation will be heard to present its case first. If the case has apparent merit and is proved to the satisfaction of the Tribunal, at least on a preliminary basis, the defence should be so informed. It will then be for the defence to decide whether to call evidence. If it does, the Tribunal may permit the accusation a short reply and the defence a short rejoinder. This was the procedure followed in the Session on Tibet (November 1992).

12. Amongst the procedures recorded in the *Verdict* on the Session on Tibet which deserves note are:

- * The procedure for notification to the State or party accused that the complaint has been accepted;
- * The procedure for the tabling before the Tribunal of all documents and other evidence provided by the party accused;
- * The appointment of an experienced advocate to represent that party in its absence;
- * The conduct of the proceedings in public except for the private consultations amongst the Members of the Tribunal;
- * The disclosure of all documentation provided to the Members of

the Tribunal;

- * The exclusion from consideration of matters not proved during the public hearings;
- * The provision of an opportunity to both sides to question witnesses who offer oral evidence and the provision of adequate time therefor;
- * The acceptance that the accuser is obliged to prove the accusation and the party accused is not obliged to establish innocence of the accusation;
- * The putting out of account of matters which have not been proved to an appropriately high standard of proof in public sessions of the Tribunal;
- * The provision of a fair opportunity to both sides to respond to matters, not otherwise identified, relevant to the determination of the case; and
- * The provision of a full opportunity to both sides to address the Tribunal before its final deliberations take place.

See Permanent Tribunal of Peoples, Session on Tibet, *Verdict*, Strasbourg, November 1992, pp 12-14. Annexure "A".

Preparation of the Verdict

13. At the close of evidence it is necessary to secure deliberation on the form and content of the Tribunal's decision, called the *Verdict*. Until now (1993) no dissenting opinions have been included in decisions of the Tribunal. This has been because of the high measure of unanimity achieved amongst Members by consensus and the sensitivity to the views of other Members in the formulation of the precise terms of the *Verdict*. Because of the pressure to provide a text of a *Verdict* before the Tribunal Members depart, long hours of deliberations and assistance to the Drafting Committee appointed from the Members will usually be necessary to complete the *Verdict*. The problems are multiplied if (as in the case of the Session on Tibet) copies of the *Verdict* in more than one language are simultaneously required. In the preparation of the final text, it is essential that Members of the Tribunal accept the discipline of offering mainly textual amendments. Otherwise, undue pressure will be imposed upon the Tribunal's small secretarial resources.

Promotion of the Tribunal

14. The Tribunal fills an important vacuum in international institutional machinery. Participation in the Tribunal exposes Members to particular problems of peoples. It may be expected that Members of the Tribunal will take steps, upon their return to their own countries and professions, to promote awareness of the Tribunal and of the just procedures by which it reaches its decisions. Out of just procedures will usually come credible decisions.

ANNEXURE

Extract from the Verdict of the Permanent Tribunal of Peoples, Session on Tibet, Strasbourg, France, 20 November 1992 Part III, paras 3.1 to 3.11 (pages 12-14).

III

OBSERVANCE OF PROCEDURAL FAIRNESS

In accordance with its Statute and the requirements of customary international law, the Tribunal observed strictly the basic rules of procedural fairness ("natural justice") in evaluating and determining the matters of the subject of the accusation. Amongst the procedures adopted were the following:

3.1 Upon acceptance of the complaint made on behalf of the people of Tibet, the People's Republic of China (PRC) was informed as soon as possible of the decision to declare the complaint admissible and of the opportunity that would be afforded to it to participate in every stage of the Tribunal's proceedings. This was done by formal notification to the PRC Embassies in Rome and Paris.

3.2 The communication to the Tribunal by the Consulate General of the PRC in Milan, Italy was fully reported to the Tribunal at the outset of the proceedings by the Secretary General. During the course of the proceedings, there was placed before the Tribunal all of the documents which were provided to the Secretary General by the Consulate General of the PRC. These have been considered by the Tribunal in reaching its Verdict.

3.3. The PRC having declined, otherwise than as in para 2, to attend and participate in the Tribunal

proceedings. The Tribunal, in good time before the hearing, appointed a competent representative with particular knowledge of the position adopted by the PRC on the subject matters of the accusation, to represent the interests of the PRC before the Tribunal, at no cost to the PRC. This representative was Mr Andreas O'Shea, Barrister at Law of London (England). The Tribunal records its appreciation for the diligent and faithful way in which he carried out his duties, necessarily under certain limitations, which were recognised by the Tribunal and which arose out of the absence of detailed instructions upon all of the matters raised in the evidence.

3.4 The procedure adopted required that the accusation be fully stated and proved in a public forum at Strasbourg by evidence considered relevant and admissible by the Tribunal and before the PRC was afforded the opportunity to respond, if it so chose.

3.5 Copy of the preliminary documentation provided to Members of the Tribunal was provided to the representatives of the parties so that they would be, at all times, fully aware of all of the material in the possession of the Tribunal.

3.6 All written evidence tendered during the hearing was marked as an exhibit in the presence of the representatives of the parties. The Tribunal has confined its deliberations to the material placed before it in open session, either orally or in writing. Members of the Tribunal accepted that all other information, earlier or otherwise gained by them, must be disregarded in determining the accusation.

3.7 An opportunity was given to the representative of the PRC, who was present throughout the hearing, to ask questions of the witnesses who gave evidence in support of the accusation. This facility was availed of and most witnesses were interrogated for the Defence. Adequate time was afforded for this interrogation.

3.8 The Tribunal accepted that the burden of proving matters asserted in the accusation rested exclusively upon the representatives of the people of Tibet. It was not for the PRC to disprove such accusation, except in so far as the matter asserted had first been established on a prima facie basis by the Accuser at the end of its case and the PRC had been so informed.

3.9 The Tribunal also accepted that the subject of the accusation had to be established to a very high standard of proof, appropriate to the grave matter asserted. Unless so established the matters asserted were disregarded by the Tribunal. Necessarily, the Tribunal was obliged to reach its conclusion upon material placed before it in the absence of the PRC itself and without the benefit of material which would be available to the PRC, relevant to the evidence given both orally and in writing during the hearing.

3.10 The Tribunal ensured that before any conclusion was drawn from the evidence, a fair opportunity was afforded to both parties, either by each other or by Members of the Tribunal itself, to be aware of the matter in issue and to have the opportunity to respond to them.

3.11 The representatives of both the people of Tibet and the PRC were afforded a full opportunity to address the Tribunal before it commenced its deliberations. Adequate time was provided for addresses in reply and rejoinders. The representative appointed for the PRC was afforded, as representing the party accused, the opportunity of the last word to the Tribunal.

3.12 The Tribunal, before reaching its Verdict, deliberated in private. All deliberations during the course of the hearing and before the consideration of the Verdict, were held in private: only members of the Tribunal and, at its invitation, the Secretary General, being present at such times. The Verdict was pronounced in open session to the public. It will be conveyed to the PRC through the Embassy of the PRC in Rome. Provided to the PRC at the time of this communication will be a copy of all documents tendered before the Tribunal during the course of the proceedings and a summary of the proceedings upon which the Verdict is based. An accurate record of the proceedings of the Tribunal, together with this Verdict, will in due course be published. Its justice and acceptability will then be in the public domain for the international community, and its peoples, to evaluate and to judge for themselves."