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Chairman: Mr. G. F. DAVIDSON (Canada).

Report of the Economic and Social Council (chapters IV and V) (A/2430, E/2447, A/C.3/L.367 and Add.1 and 2, A/C.3/L.369, A/C.3/L.371, A/C.3/L.372) (*continued*)

[Item 12]*

HUMAN RIGHTS (*continued*)

DRAFT RESOLUTION SUBMITTED BY ECUADOR, GUATEMALA, PHILIPPINES AND URUGUAY (A/C.3/L.372)

Right of petition

1. Mr. PAZHWAK (Afghanistan) said that he supported the joint draft resolution on the right of petition (A/C.3/L.372) in principle, but would require more time to ponder the substance because his Government was not a member of the Commission on Human Rights.

2. He would submit certain amendments (A/C.3/L.390), merely to improve the wording. The aim of the draft resolution was to give all victims of a violation of human rights the right to appeal; thus, the emphasis should be laid on the general right, rather than the individual and that could be achieved by substituting the word "directly" for the word "primarily" in the second paragraph of the preamble. The phrase "failure to respect" was ambiguous and should be replaced by "the violation of".

3. In the third paragraph the phrase "the most elementary rule of justice" might cause difficulty. While all Members agreed on the meaning of justice, the rules of justice might well vary from country to country. The word "injury" in that paragraph seemed to be restrictive; persons whose human rights had been violated might find it hard to prove that they had suffered injury.

4. He was proposing amendment of the operative paragraph on the basis of General Assembly resolution 421 (V), part F; the Economic and Social Council should ask the Commission on Human Rights to draft provisions recognizing the right of petition, to be considered by the General Assembly before they were finally embodied in the draft covenants so that countries which were not members of the Council or the Commission

might have an opportunity of expressing their views on them.

5. Mrs. PINTO DE VIDAL (Uruguay) said that the decision of the Commission on Human Rights not to include an article on the right of petition had been taken only by a tie vote. The Uruguayan proposal for the appointment of an Office of the High Commissioner (Attorney-General) for Human Rights, an attempt to find a way out of the impasse, had been on the Commission's agenda since 1950, but nothing had been done about it. If the Commission continued to ignore that proposal, the General Assembly, the body ultimately responsible for the draft covenants, should instruct the Commission to discuss the matter. Since the signing of the United Nations Charter there could be no doubt that the individual had become an element in international law. Thus, the right of petition might properly be embodied in the draft covenants. If States alone were given the right of petition, they would certainly not denounce any violations of human rights on their own territory and there would be political difficulties if they denounced such violations on the territory of other States. Their motives would be suspect, and international tension would be created. It was the individual who suffered persecution and needed the right of petition to the United Nations in order to safeguard the exercise of his rights.

6. The joint draft resolution (A/C.3/L.372) proposed no innovation in international law. The League of Nations had accepted the right of petition in the case of minorities. The right applied in the United Nations to Non-Self-Governing and Trust Territories, and the Charter provisions on the consultative status of non-governmental organizations allowed petitions on a number of subjects, including human rights. Article 25 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms granted the right of petition to individuals and groups and the joint draft resolution had been based on that text. The draft covenants would be of value only if individuals were accorded the right of petition.

7. The Afghan amendments (A/C.3/L.390) seemed acceptable on the whole.

8. Mr. LOPEZ VILLAMIL (Honduras) said that he did not oppose recognition of a right of petition, but he was against the proposed method of according it. A petition was an action in public or private law. The arguments that had been used against the mandatory transmission of information on Non-Self-Governing Territories were applicable to the question of petitions. It would be very dangerous for the United Nations to seek to make law. Legislation was essentially within the domestic jurisdiction of States, and no jurisdiction had yet been recognized with higher authority than the States concerned, particularly with regard to the appraisal of the civil rights of its own nationals. The Universal Declaration of Human Rights had recognized

*Indicates the item number on the agenda of the General Assembly.

the principle of legal equality, but juridical formulas should not be used in applying that principle. Under the Charter, and under its own Statute, the International Court of Justice could not make cognizance of private disputes and could not interfere with the execution of justice within a State.

9. Undoubtedly violations of human rights did occur, but it was hard to conceive who would decide whether petitions were well-founded or merely the result of local political disputes. The United Nations was not a court of law. If it became one, it would become involved in a welter of petty disputes, to the detriment of its work in promoting international harmony. It could of course intervene in Non-Self-Governing and Trust Territories to provide the necessary and effective supervision of the actions of the Administering Authorities. But there was no parallel between those territories and sovereign States. It was true that some under-developed countries looked very similar to Non-Self-Governing Territories sociologically; but sociology should not be confused with law. The Latin-American countries had engaged in a long and arduous struggle to implant the principles of the sovereign equality of all States and of non-intervention in the domestic affairs of other States.

10. In law no distinction was made between political and economic complaints. The United Nations would be ill-advised to stray into the field of judicial procedure. His delegation had voted for the proposal made in the Second Committee for safeguarding a country's right to nationalize its own resources.¹ If the right of petition were accorded to individuals, persons affected by expropriation might well petition the United Nations against it. The joint draft resolution (A/C.3/L.372) was therefore unwise.

11. The Mexican delegation in the Organization of American States had introduced a proposal for the protection of human rights without infringing national sovereignty and the principle of non-intervention in the domestic affairs of States; that was the correct approach. The solution proposed by Uruguay in 1945, that of collective intervention, had been rejected unanimously by all the other Latin-American countries. No Latin-American country would ratify a covenant embodying such procedures as would flow from the joint draft resolution.

12. Mr. ABDEL GHANI (Egypt) observed that there were two schools of thought with regard to the kind of covenant to be drafted. The school which favoured a progressive and liberal document capable of meeting the needs and hopes of humanity sought to extend the right of petition on human rights to every individual, as the Council of Europe had done in the Convention for the Protection of Human Rights and Fundamental Freedoms. The other school favoured a covenant establishing human rights within the limitations imposed by existing international tension, and sought so to narrow the right of petition as to deprive the individual of his right to complain. Paradoxically, members of the Council of Europe, which had granted the unrestricted right of petition to every European, belonged to the restrictive school in the United Nations.

13. The purpose of the draft resolution was to grant to the individual, the eternal victim of any violation

or denial of human rights, the right to petition the United Nations directly or through a duly constituted group, which meant a national organ formed under a country's constitution to safeguard the rights of the inhabitants. Non-governmental organizations were mentioned also because their contribution to the cause of human rights was fully appreciated by the Third Committee and the Commission on Human Rights; all International Labour Organisation conventions gave them a similar right, and all complaints relating to human rights embodied in ILO conventions submitted in the past thirty years had come from non-governmental organizations.

14. The existing screening clause in the draft covenant could be reinforced to prevent the proposed human rights committee from being inundated with petitions.

15. Administering Authorities had argued in the Third Committee and the Commission on Human Rights that the right of peoples to self-determination should be excluded from the draft covenants because self-determination was a collective and not an individual right. They now had an opportunity to support the rights of the individual by voting for the draft resolution, which was a proposal in the spirit of the United Nations Charter, and to demonstrate that their attitude was not a mere pretext for opposition to the right of self-determination.

16. Mr. REYES (Philippines) said that he had co-sponsored the draft resolution, first, because the decision on the question was so important that the General Assembly had to take responsibility for it, and, secondly, because the Assembly had clearly indicated its desire to take that responsibility by its resolution 421 (V), part F.

17. There were in effect three kinds of veto exercised in the United Nations proceedings: the Charter provision for the unanimous vote of the five permanent members of the Security Council; non-co-operation, through denial of the General Assembly's competence or failure to implement its decisions; and the evasion or reversal of such decisions through changes in the majority viewpoint of the Councils or the functional commissions. That accounted for the General Assembly's increasing tendency to take responsibility for major political decisions, particularly concerning human rights. Resolution 421 (V), part F, was the equivalent, in all except the use of mandatory language, of an instruction from the General Assembly to the Economic and Social Council and the Commission on Human Rights to include the right of petition in the draft covenants. The resolution had been adopted after the Commission had several times rejected proposals to the same effect by very narrow majorities or by tie votes.

18. Every individual had an inalienable right to petition his national government. Inasmuch, as the covenants placed the individual's rights under international protection, they should recognize his right of international petition. The absence of the right of petition from the covenants was a grave defect. Fear of abuse of the right of petition did not warrant denial of the right; the Commission could provide safeguards against abuse. Nor was the objection valid that international law applied only to States. When the Articles of the Charter relating to the Economic and Social Council had been before Commission No. II at San Francisco, that Commission had affirmed that the individual, as well as the State, was a subject of international law.

¹ See *Official Records of the General Assembly, Seventh Session, Second Committee, 237th meeting.*

19. Mr. MENESES PALLARES (Ecuador) pointed out that the Charter not only empowered, but legally bound, United Nations organs—in effect the General Assembly and the Economic and Social Council—to adopt measures and create machinery to implement human rights. Article 13 plainly authorized the General Assembly to discuss complaints concerning human rights and it had done so, for instance, in connexion with the treatment of Indians in the Union of South Africa and the observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms. The Charter did not specifically limit the Council to purely deliberative functions or to the mere preparation of treaties and conventions, and the Commission on Human Rights was fully empowered by both the Charter and its own terms of reference to implement an international covenant concerning human rights. He agreed with the Philippine representative that the individual was a subject of modern international law; the fact that the Charter did not authorize the United Nations to interfere with the sovereignty of States did not absolve it from its legal obligation to implement human rights and fundamental freedoms.

20. Recognition of the right of petition was the first step in any system of implementation of human rights. The League of Nations had adopted a liberal system for the receiving of petitions from minorities; but with regard to human rights in general the United Nations had not kept abreast of the progress made in modern constitutional law. With the development of democratic institutions and of representative government, the right of petition had lost its ancient character of a concession or extraordinary privilege. It appeared in most constitutions as the simple corollary of the progress of the institutions of modern democracy. In the United Nations, as a result of the vacillating attitude which had characterized the Commission on Human Rights in particular, the right of petition had become a disputed and debatable right.

21. The objection that the number of petitions would be too great to handle was not valid. The United Nations was able to deal with the national and international problems of humanity. There might be frivolous or fraudulent petitions, but screening machinery could be set up to deal with them, and they did not excuse the United Nations from dealing with petitions.

22. Mrs. PINTO DE VIDAL (Uruguay), in reply to a question from Mrs. EMMET (United Kingdom), explained that the words "natural person" in the draft resolution meant any person capable of exercising his rights and obligations. A "duly constituted group of individuals" was any society or association which had been granted legal personality.

23. Mrs. HARMAN (Israel) said that any violation of human rights must be profound concern to every member of the family of nations. Any individual whose rights were violated should have the right of international redress, if satisfaction could not be obtained under domestic jurisdiction. Her delegation therefore accepted the principle of incorporating the right of petition in the draft covenants. Acceptance of the principle, however, was only a first step. It was essential to provide for the assumption of certain legal obligations by governments and that aspect of the question was bound up with the whole machinery of implementation, without which the covenants would remain declaratory.

24. Acknowledgement of the right would lead to no progress unless governments were willing to assume the obligation to reply. It was doubtful, however, whether all the petitions received would be acceptable and it was difficult to establish criteria for ascertaining the validity of complaints. The only method of doing that would be for governments to set up machinery for an impartial investigation of every complaint; even then, the impartiality of the government concerned would be questionable. Petitions might come in from dissident elements, hostile to the government, either in cases where efforts to obtain justice at home had failed or as a deliberate attempt on the part of another State to embarrass a government.

25. To prevent governments from being flooded with charges from disgruntled persons, it was essential to ensure that only well-authenticated complaints should be submitted. The United Nations might set up a quasi-judicial body to conduct investigations, but, however outstanding the qualifications of the members of such a body might be, it was unlikely in the existing political circumstances that it would be acceptable to every State. The right of petition might be exploited by hostile States against one another. Furthermore, ability to judge would entail a very good knowledge of the legal system, constitution and general conditions of the country concerned.

26. The sifting of petitions could best be carried out by certain non-governmental organizations of high repute, which had the advantage of having branches in many countries and of being able to appreciate the many facets of situations from which petitions might arise. Their international ramifications, knowledge of world problems and devotion to humanitarian ideals made them the best vehicles for the submission of petitions. In addition, it might be assumed that such experienced organizations would submit only serious cases of violation of human rights, warranting government action, to the appropriate United Nations organ.

27. In countries where non-governmental organizations could not function freely, the right of petition would obviously not exist. Acceptance of the right presupposed the individual's freedom of expression and an attempt by a government to suppress a non-governmental organization through which a petition had been communicated would constitute a serious interference with democratic processes and would imply a situation where there was no respect for human rights.

28. She would ask for a separate vote on the words "every natural person, every duly constituted group of individuals and" in the operative part of the draft resolution (A/C.3/L.372).

29. Mr. JOUBLANC RIVAS (Mexico) said that the right of petition by individuals and groups was recognized by the Mexican Constitution. The attitude of his country's representatives on international bodies had consistently reflected the recognition of the principle. He therefore approved of the principle underlying the joint draft resolution, but regretted the absence of provision for practical implementation which would not be prejudicial to the sovereignty of States.

30. It was difficult to see how the proposed human rights committee or the attorney-general for human rights could deal adequately with petitions if the right of petition were accorded indiscriminately to all individuals, groups and non-governmental organizations. Classification of petitions would take far too much time

for the proposal to be practicable. Moreover, failure to deal with petitions when the rights had been acknowledged would damage the Organization's interference in the domestic affairs of States or against submission of petitions by subversive groups.

31. Mr. ESTRADA DE LA HOZ (Guatemala) stated that the great hopes raised throughout the world by the United Nations work on the draft covenants would be dashed if those instruments were finally adopted with a federal clause and an article on reservations, but without an article on the right of petition. If that happened, the covenants would serve no purpose which was not already fulfilled by the Universal Declaration of Human Rights. The objective of the covenants was to proceed from declaratory statements on rights to their implementation. Without the right of petition, that objective could not be achieved.

32. Representatives who had raised the objection of State sovereignty seemed to be somewhat confused as to the part played by sovereignty in connexion with human rights. It was true that sovereignty would be infringed if any State were to demand compliance with certain rights a State applied to an international organ to solve their difficulties. There could be no conflicting sovereignty within a State, since sovereignty rested with peoples, and not with governments.

33. The Ecuadorian representative had rightly pointed out that the United Nations was lagging behind many national constitutions in the application of the right of petition. There should be no difficulty in transferring to the international level a precept which was being actively implemented in many countries.

34. It had been argued that recognition of the right would result in a plethora of petitions. In a matter which so vitally affected the Organization's interests, however, no effort or resources should be spared to achieve effective application of the principle. The measure was further dictated by the evolution of international law. It was clearly recognized in United Nations and other international documents, such as the Charter of the Nürenberg Tribunal, that the individual, and not only the State, was the subject of international law.

35. He agreed with the purport of most of the Afghan amendments (A/C.3/L.390). The substitution of the word "directly" for the word "primarily", in particular, was an improvement because it eliminated the somewhat anachronistic concept that society revolved around the individual. The Afghan proposal to address the request in the operative part to the Economic and Social Council seemed to be unnecessary, however. The General Assembly had already instructed the Council to deal with the matter and there was nothing to prevent the Assembly from addressing its request directly to the Commission on Human Rights.

36. Mr. KOS (Yugoslavia) pointed out that, although the draft resolution seemed simple, it raised problems affecting closely interrelated questions. The right of petition formed an integral part of the measures of implementation, on which the Commission on Human Rights had not yet agreed. That right had been taken out of its proper context and brought before the General Assembly for a rapid decision.

37. It was not clear to which articles of the covenant the right would apply, whether the same right could be granted to individuals as to States, or what machinery

would be used. The proposed human rights committee, which would be the logical body to deal with the matter, had not yet been set up. No clear decision had been taken on the method of dealing with communications, but the Committee was being asked to decide on the sources of communications. It would undoubtedly be necessary to set up some sifting machinery to ensure that all the petitions which reached governments were well-founded and well-documented. Until more details could be given on procedure, his delegation could only abstain on the draft resolution.

38. He doubted whether the condition of international relations was currently such that the individual was really the subject of international law. Even the implementation of provisions relating to States depended on the good will of governments. The extent of their collaboration with the human rights committee on such questions was still unknown. It was the more doubtful whether governments would co-operate with individuals or other non-equal parties, who were not signatories of the covenants.

39. Uncertainty about the basis on which petitions could be submitted would lead to abuse of the right and to the deterioration of international relations. Honest individuals and reputable organizations could of course submit valuable communications. Unfortunately, not all non-governmental organizations were equally unimpeachable and, in any case, they could not be placed on the same level as the signatories of the covenants.

40. It was also important to give more details of the application of the right in countries where human rights were neglected and in countries and territories which were not masters of their own destiny.

41. The main objective was to complete the covenants and to have them signed by as many Member States as possible. The position of the individual in international law was not yet established. The covenants should reflect the facts of the international situation, while leaving wide possibilities for constructive action in the future.

42. Mr. LOPEZ VILLAMIL (Honduras) stressed that his delegation had no objection to recognition of the right of petition in the draft covenants, but considered that the suggested procedure would result in encroachment on the domestic jurisdiction of States.

43. He could not agree with the thesis that sovereignty resided in the people. According to modern constitutional theory, although the people held an element of sovereignty, the public authority constituted another element of that sovereignty. The public authority could be controlled only when the country or territory concerned was fully self-governing and independent in its relations with other States. That was why his delegation had voted in the Fourth Committee against the cessation of transmission of information on Puerto Rico under Article 73 e of the Charter.²

44. Mr. MENESES PALLARES (Ecuador) thought that the joint draft resolution contained no provisions implying interference in the domestic affairs of States. The only method of applying the provisions of the United Nations Charter with regard to the right of petition was to set up a system for screening legitimate petitions. The risk that invalid petitions would be

² See *Official Records of the General Assembly, Eighth Session, Fourth Committee*, 355th and 356th meetings.

received was outweighed by the need to deal with substantiated complaints against violations of human rights.

45. It had been suggested that some countries might be prevented from signing the covenants by the possibility of interference in their domestic affairs. Signa-

ture of the covenants, however, should not depend on political or social contingencies, but on the philosophical concept of justice for all individuals and groups. His country would sign the covenants and observe them faithfully.

The meeting rose at 1.10 p.m.