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Agenda item 60:

Interim measures, pending entry into force of the Covenants on Human Rights, to be taken with respect to violations of the human rights set forth in the Charter of the United Nations and the Universal Declaration of Human Rights (*continued*) 341

Chairman: Mr. Hermod LANNUNG (Denmark).

AGENDA ITEM 60

Interim measures, pending entry into force of the Covenants on Human Rights, to be taken with respect to violations of the human rights set forth in the Charter of the United Nations and the Universal Declaration of Human Rights (A/3187 and Add.1, A/C.3/L.592, A/C.3/L.594) (*continued*)

1. Mr. PAZHWAQ (Afghanistan) said that despite the explanations the Greek representative had given in reply to some of the questions put to him at the preceding meeting, the Greek draft resolution (A/C.3/L.592) raised a variety of difficulties which had prompted the Afghan delegation to present some amendments (A/C.3/L.596).

2. The preamble in particular seemed to him unsatisfactory. The fourth paragraph—and especially the words “in the best possible circumstances—might well give the impression that the Third Committee and the United Nations as a whole were highly pessimistic as to the future of the Covenants. Furthermore, he was opposed in principle to the idea of “interim measures”, for he feared they might hold up the completion of the Covenants. To judge from the fifth paragraph, the author of the Greek proposal certainly seemed to share that fear. Incidentally, there was a contradiction between the fourth paragraph which stated that in the best possible circumstances the Covenants would not enter into force for some time, and the fifth, which contained the phrase: “the intention being that the Covenants should enter into force as soon as possible”. There was no particular difficulty about the sixth paragraph except for the word “interim”; as he had said, he was opposed to interim measures. In its amendments the Afghan delegation accordingly proposed the deletion of the fourth and fifth paragraphs and minor changes to the sixth paragraph.

3. The operative part by which Afghanistan proposed to replace that of the Greek draft resolution was clear and required no explanation. The Covenants must remain the Committee's main concern, and the time had come to set a time limit for their completion. The Afghan proposal was prompted by practical considerations, and he hoped it would be favourably received.

4. Mr. MOROZOV (Union of Soviet Socialist Republics) noted that some confusion had arisen in the

minds of representatives since the Greek proposal had been presented.

5. That odd situation was due to the contradictions in the Greek representative's statement. His insistence on the necessity of protecting human rights, respecting the Charter of the United Nations and consolidating international co-operation could only be applauded, but at the same time it must be pointed out that he had drawn questionable conclusions from those premises. The normal course would have been for the Greek representative, after outlining the task of the United Nations, to recommend that the Assembly redouble its efforts to perform its basic duty in the field of human rights, that is, to complete its consideration of the draft Covenants; but that logical deduction had not been drawn. He did not seek to cast doubt on the intentions of the Greek delegation, whose sincerity was beyond question; but in all objectivity it could be said that the Greek proposal did nothing to further the work of the United Nations in the matter of respect for human rights.

6. Various speakers had already stated their views on the proposed machinery. He would merely point out that the Commission on Human Rights was not in a position to perform the function which would be conferred upon it under the Greek proposal. That was quite clear, indeed, from the Secretary-General's note (A/C.3/L.594). The idea that the Commission on Human Rights should decide its competence for itself, as the Greek delegation proposed, was hardly acceptable. There was no reason why the interpretation handed on by an organ composed of only eighteen States should be wiser than that of the Third Committee, on which eighty States were represented.

7. The main weakness of the Greek proposal, however, was that it was founded on a fallacy. As the Afghan representative has pointed out, it was based wholly on the assumption that the Covenants could not be implemented for several years. That was not so. The time to be spent by the Third Committee on the articles that remained to be examined should not automatically be gauged from the time it had spent on the articles already adopted. Some provisions were identical or similar in both Covenants, and in any case the Committee's working conditions were always open to improvement. Indeed, the Committee had no reason to be dissatisfied with the progress it had made at the current session of the General Assembly. The texts it had adopted were an improvement on those which had been laid before it. It was true that the discussion had proceeded somewhat slowly, but it should not be forgotten that it was the first time an Assembly representing eighty States had undertaken to study legal instruments of such importance as the Covenants on Human Rights. In the light of its experience at the eleventh session the Third Committee would be able to organize its work more satisfactorily at the twelfth and thirteenth sessions; for example, it might consider placing a

stricter time limit on speakers, and making stricter conditions for the presentation of amendments by delegations. In the circumstances, the Greek delegation's initial hypothesis was false, and its proposal pointless. The machinery it envisaged would begin operating when the Covenants entered into force, and would thus be entirely superfluous.

8. Furthermore, the Greek proposal reflected a pessimism which it would be dreadful for the Committee itself to endorse. Its adoption would give credence to the idea that States could not agree on the minimum rights to be accorded to individuals, and that there was a crisis in the United Nations on that issue. The fifth paragraph of the preamble would not suffice to cloak the underlying pessimism of the draft resolution as a whole. The Committee should proclaim its faith in the future and do everything in its power to complete the consideration of the draft Covenants as soon as possible.

9. In that respect paragraph 1 of the operative part of the text proposed by Afghanistan (A/C.3/L.596), providing that the Third Committee should complete its consideration of the draft Covenants by the end of the thirteenth session of the General Assembly was certainly acceptable. On the other hand, the Soviet delegation had serious reservations about the idea underlying paragraph 2. The study which it was proposed that the Commission on Human Rights should undertake would not bear fruit until the consideration of the Covenants was concluded, so that the Commission's proposals would not be particularly useful. Furthermore, the Commission had already made recommendations concerning measures to be taken with respect to the violation of human rights, namely, the measures of implementation included in the two Covenants. It was not clear why the Commission, after drafting those articles with great care, should be asked to make fresh recommendations. It should also be borne in mind that the Commission had already undertaken many studies, all of which were designed to improve the observance of human rights. If it was assigned the task contemplated by Afghanistan it would either go thoroughly into the question, which would take a great deal of time, or would rule itself incompetent, but only after what would probably be a lengthy discussion. At all events it would have to devote a number of meetings to that problem, though its agenda was already crowded and the next session was to be abbreviated. The Third Committee should take care not to lay too heavy a burden on the Commission on Human Rights. It should not forget that in any case the Commission was mainly concerned with defending and protecting human rights and fundamental freedoms to the best of its ability.

10. Mr. PAZHAK (Afghanistan) thanked the representative of the USSR for his constructive criticism of the Afghan amendments, but stressed that the amended text would refer to measures in general and not to "interim" measures.

11. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had fully understood the intent of the proposed amendments. He had expressed some doubts regarding operative paragraph 2 of the text proposed by Afghanistan because he considered that it was necessary, at all costs, to avoid diverting the Commission on Human Rights from its current work.

12. Mr. ABDEL-GHANI (Egypt) noted that even the delegations which had criticized the Greek proposal

apparently assumed that there was a connexion between the Covenants and complaints of violations of human rights. No such connexion necessarily existed, and his delegation would mention several reasons which led it to believe that the question of complaints should be considered separately from that of the Covenants.

13. First of all, there was a chronological reason. The United Nations had begun to receive complaints from private individuals and from organizations, ever since its foundation, before either the Covenants or even the Universal Declaration of Human Rights existed. Not only had it received them, but it had adopted texts—resolutions and recommendations—before the drafting of the Covenants had actually begun.

14. The second reason was connected with the entry into force of the Covenants. He did not share the Greek representative's pessimistic view, and in spite of the slow progress of the Committee's work during the current session, he was convinced that it would soon complete the preparation of the Covenants. Several representatives had indicated measures that might be taken to accelerate completion of the work. However, even when the Covenants were ready and were adopted by the General Assembly, they would not come into force until they had been ratified by twenty States, and even when they did come into force many States would not be parties to them. It was therefore obvious that a very long period would elapse—during which complaints would continue to reach the United Nations—before the implementation machinery began to function.

15. The procedure provided in the existing text of the draft Covenants for application in the case of violations dealt only with complaints made by one State against another. That did not solve the problem of complaints from organizations or private individuals, which the United Nations received by the thousands every year. The Greek proposal (A/C.3/L.592) was even more restrictive on that point; it referred only to complaints by one Member State against another Member State, thereby excluding not only complaints by non-member States, but complaints by private individuals and organizations, which should be able to seek assistance from the United Nations. The question before the Committee had nothing to do with the Covenants, as the authors of complaints might well base them on the United Nations Charter, the Universal Declaration of Human Rights or even mere resolutions.

16. The Egyptian delegation therefore considered that a distinction should be made between the question of the Covenants and the question of complaints. The latter question had been raised several times in the United Nations. The Commission on Human Rights had itself sought directives from the Economic and Social Council, which in its resolution 75 (V) had told the Commission that it had "no power to take any action in regard to any complaints concerning human rights". The delegations of Egypt and Uruguay had then submitted to the Economic and Social Council a draft resolution proposing that the Commission on Human Rights be empowered to act on complaints received.¹ Unfortunately, that proposal had been rejected by an overwhelming majority.² His delegation could not accept the Council's interpretation, in resolu-

¹ *Official Records of the Economic and Social Council, Fourteenth Session, Annexes, agenda item 46, document E/L.447.*

² *Ibid.*, Fourteenth Session, 656th meeting.

tion 75 (V), of the terms of reference of the Commission on Human Rights. That interpretation should be reviewed and the terms of reference of the Commission on Human Rights should be made to indicate clearly that the Commission could act on complaints received either from States or from other sources.

17. He could not support the Greek proposal in its existing form because of the link it established between complaints and the Covenants and because it was too restrictive. He would support operative paragraph 1 of the text proposed in the Afghan amendments (A/C.3/L.596), although he thought it might have been the subject of a separate procedural proposal. He would also support paragraph 2, with the exception of the word "possibility", which did not seem necessary. It was sufficient to say "... to study the measures which can be adopted ...". Subject to that reservation, he accepted the Afghan amendments and could accept the Greek draft resolution if modified in accordance with them.

18. Mr. PAULUS (India) agreed with the representative of Greece that there was at present no body which could take appropriate action in the event of violation of human rights and that it would doubtless be a step forward to establish for that purpose a procedure in conformity with the provisions of the United Nations Charter.

19. However, the measures suggested in the Greek proposal (A/C.3/L.592) raised many difficulties. The draft Covenants already contained implementation clauses and it might therefore be undesirable to adopt a parallel procedure which might hamper the application of those provisions. Furthermore, he doubted whether the machinery provided in the Greek draft resolution could function for another two or three years. By then, the preparation of the draft Covenants would probably be completed. Accordingly, it seemed pointless to develop a procedure which would be used for only a relatively short period.

20. Regarding the task which it was proposed to entrust to the Commission on Human Rights, the Commission, under its terms of reference, had to deal with general matters and had no power to consider individual cases. Pursuant to resolution 75 (V) of the Economic and Social Council, it merely studied communications addressed to it by private individuals but could take no action on them. He wondered what measures the Commission or the proposed committee, which would be a subordinate body, could adopt with regard to the violations referred to in the Greek draft resolution. Incidentally, by examining complaints objectively and submitting conclusions, the Committee would be judging the conduct of sovereign States, which would be particularly undesirable since its members would be acting not as national representatives but in a personal capacity.

21. It had been stated that the Greek proposal was concerned with mass violations, in other words violations which affected not merely individuals, but large groups. If that was the case, the problem would be even more likely to be a political one and Governments would be even less likely to agree that a committee of private individuals representing only themselves should sit in judgment on their conduct. The Commission on Human Rights was not competent to deal with such questions and even less competent to set itself up as a judge of Governments. It would be more inappropriate still for the Commission to entrust that task to a

committee. He therefore did not see the use of referring the matter to the Commission on Human Rights.

22. The representative of Greece had said that his proposal had the advantage of being essentially theoretical. The Third Committee would simply ask the Commission on Human Rights to study the matter and to submit recommendations. He could not accept that method, which would amount to a confession of failure. It was not right to entrust a problem to another body without giving it the slightest guidance as to how to proceed.

23. It had also been said that the Third Committee, being pressed for time, could simply leave it to the Commission on Human Rights to go into details. There again, lack of time was not a valid excuse. If the Third Committee could not deal with the matter during the current session of the General Assembly, it could take it up again at the next session.

24. His delegation was therefore unable to vote in favour of the Greek proposal and hoped that the representative of Greece would not press for a vote on it. In the light of the discussions at the current session, the representative of Greece could perhaps prepare concrete proposals which could usefully be considered at a later date by the Commission on Human Rights or by the Economic and Social Council.

25. His delegation approved the main features of the Afghan proposal (A/C.3/L.596).

26. Mr. ASIROGLU (Turkey) said that since its inception, the United Nations had striven unceasingly to ensure the observance of human rights and fundamental freedoms. While the goal was still far from being achieved, there had been substantial progress in that direction thanks to the proclamation of the Universal Declaration of Human Rights, the drafting of the Convention for the Prevention and Punishment of the Crime of Genocide, the study of the International Covenants on Human Rights and the adoption of various relevant measures by the General Assembly. The United Nations had won a great victory by securing recognition of the idea that good relations between States and the maintenance of peace essentially depended on the observance of human rights. In the desire to apply that idea in practice and to set up machinery for ensuring the universal observance of human rights, the United Nations had decided to prepare a legal instrument designed specifically for that purpose, and the Third Committee had been examining that instrument for two years. Pending the entry into force of the Covenants, the organs of the United Nations were continually seeking other means for ensuring the observance of the principles enunciated in the Covenants. In that connexion, the United States recommendations concerning the right of peoples to self-determination should be recalled.

27. A new proposal (A/C.3/L.592) had now been submitted to the Third Committee by the Greek delegation. He was glad to say that on certain points he was in agreement with that delegation. He, too, deplored the fact that despite the efforts of the United Nations, violations of human rights continued to occur in various parts of the world and that the Organization was still unable to put an end to such violations. Like the Greek representative, he felt that universal respect for human rights constituted the very foundation of international peace, security and co-operation.

28. While sharing the concern which had prompted the Greek proposal, his delegation had serious doubts

as to the usefulness of the proposed interim measures. The Greek representative had emphasized the need for ensuring that, in a discussion of complaints concerning human rights, political considerations should not prevail over legal and humanitarian considerations. The complete exclusion of any political factors would indeed be desirable, if the question was to be examined in all objectivity. He asked whether that was possible. When they examined the complaint of one State against another, United Nations bodies would find it extremely difficult to disregard completely the political aspect of the problem. Although the Commission on Human Rights, to which the Greek delegation was proposing to entrust the task of examining such complaints, was in fact a technical body, its members nevertheless represented States and were dominated by the political interests of those States. Moreover, even if the political element could be completely eliminated in the Commission, the resolutions adopted by it would be referred to the General Assembly for its final decision, and the Assembly was essentially a political body.

29. The Greek draft resolution provided for the creation of a committee whose terms of reference were not clearly defined. Yet as it would be called upon to examine complaints by one State against another, it would necessarily have to collect information and institute inquiries. In other words, the committee's activities would result in a partial encroachment upon the sovereignty of States. His delegation did not think that such encroachments would be consistent with the provisions of the Charter. The proposal for the inclusion of a provision for the creation of a similar committee in the draft Covenant on Civil and Political Rights had been based on the assumption that any State ratifying the Covenant would undertake to accept certain limitations of its sovereignty. Once it had ratified the Covenants, it would therefore see no reason for disputing the jurisdiction of the Human Rights Committee.

30. Yet another aspect of the question merited consideration, namely, what legal rules would govern the work of the committee referred to in the Greek proposal. The Greek representative had indicated that the committee would be guided by the directives contained in the Charter and in the Universal Declaration of Human Rights. The latter was not a legal instrument, and the Charter could not be regarded as a complete instrument in the matter of human rights; it was incomplete as to directives and as to legal provisions and specific measures to be adopted. If the committee was to function usefully, its activities would have to be governed by a legal system similar to that proposed in the draft Covenants.

31. In reply to a question by the representative of Saudi Arabia, the Greek representative had explained (748th meeting) that the committee should concern itself mainly with violations of the rights of groups and communities, and violations of the right of peoples to self-determination. The representative of Saudi Arabia had cited two questions, those of prisoners of

war and forced labour, which had been examined by United Nations bodies without any positive result. In the circumstances, the creation of the committee proposed in the Greek draft resolution was hardly likely to secure better protection for the rights of groups and communities.

32. To secure the right of peoples to self-determination, the Economic and Social Council had adopted a resolution (586 D (XX)) providing for the establishment of an *ad hoc* Commission to examine any situation resulting from alleged denial or inadequate realization of the right of peoples to self-determination. The task of that Commission would not be completely identical with that suggested for the committee referred to in the Greek proposal, but the objective would be the same. By adopting the Greek proposal, the Third Committee would therefore place itself in a somewhat contradictory situation. On the one hand, it had decided, for the second time (740th meeting), to defer to a later session the examination of a recommendation by the Commission on Human Rights that a good offices commission should be set up to ensure observance of human rights.³ On the other hand, it would be asking the Commission on Human Rights to study the possibility of creating a committee with similar terms of reference. The Greek proposal for the establishment of the committee would overlap with the Commission's recommendations referred to, and it could therefore hardly be expected that it would be adopted.

33. He hoped that those considerations would help the members of the Committee to modify the Greek draft resolution.

34. Mr. MASSOUD-ANSARI (Iran) announced that he would be unable to participate in the Commission's work in the future, since he had to leave New York shortly. He congratulated the Chairman for having so ably discharged his duties and thanked the members of the Committee for the co-operation they had given him in his capacity as Vice-Chairman.

35. The CHAIRMAN paid a cordial tribute to the Vice-Chairman and thanked him for the services he had rendered to the Committee.

36. Mr. PAZHWAQ (Afghanistan), supported by Mr. BAROODY (Saudi Arabia), Mr. MOROZOV (Union of Soviet Socialist Republics), Mr. BRENA (Uruguay), Miss BERNARDINO (Dominican Republic), Mrs. QUAN (Guatemala), Mrs. LORD (United States of America), Mr. ASIROGLU (Turkey), Mr. MONTERO (Chile), Mr. CHAUDHURI (Pakistan) and Mr. PONCE (Ecuador) expressed their regret at the Vice-Chairman's departure. The Committee had appreciated his tact, wisdom and judgment.

The meeting rose at 1 p.m.

³ Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7, annex IV, draft resolution F.