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CONTENTS

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.366, A/C.3/L.367 and Add.1, A/C.3/L.368, A/C.3/L.369, A/C.3/L.371, A/C.3/L.372, A/C.3/L.374) (*continued*)

[Item 12]*

HUMAN RIGHTS (*continued*)

DRAFT RESOLUTIONS SUBMITTED BY EGYPT (A/C.3/L.366) AND AUSTRALIA (A/C.3/L.374) (*continued*)

Federal State clause (continued)

1. Mr. PAZHWAK (Afghanistan), introducing his amendments (A/C.3/L.387) to the Egyptian draft resolution (A/C.3/L.366), said that only the federal States could say whether their concern about the constitutional difficulties raised by treaties and conventions had greatly diminished; and none of them had done so. The very nature of the proposed federal State article precluded the Third Committee from reaching a decision on it; the more technically qualified Commission on Human Rights was better able to make a decision whether the article should or should not be included in the draft international covenants on human rights. The General Assembly would subsequently be able to review that decision. The Commission's conclusions would enable the Third Committee to judge whether the federal State's difficulties were really insuperable.

2. Mr. AZMI (Egypt) said that he could not accept the Afghan amendments.

3. Mr. VENKATARAMAN (India) said that he was glad that his delegation's sincerity in supporting the inclusion of a federal State article had not been doubted by the Egyptian representative. The representative of Egypt thought India was labouring under a misunderstanding regarding the need for a federal clause. India agreed that the decision whether the inclusion was politically expedient should be left to the General Assembly. After that, the drafting of the article in such a way as to prevent any evasion of obligations could be left to expert bodies such as the Commission on Human Rights and the Economic and Social Council. In referring to the text submitted to the Commission by the representatives of Australia, India and the United States of America (E/2447, annex II, part B III), the Egyptian representative had asserted that it was inappropriate owing to the existence of General Assembly resolution 422 (V), inequitable in that it discriminated against unitary States, and unnecessary since States could undertake treaty obligations even if they were federal in structure. The Egyptian representative had also implied that the constitutional difficulties encountered by federal States were essentially domestic and should be solved by domestic action. That approach was basically wrong. The United Nations existed for mutual aid. The difficulties of federal States were not wholly their own concern, nor should unitary States vote against the inclusion of a federal clause merely out of self-interest. Methods of co-operation should be studied dispassionately.

4. The division of powers in federal States differed widely from one such State to another. In some countries, the states had the power to legislate in certain matters, the federal authority none. If the states and the federal authority were politically similar, as in the Soviet Union, no difficulties arose; but in a parliamentary democracy, where different political parties might assume control over the federal and state governments respectively, the federal authority often could not assume certain commitments on behalf of the local authorities.

5. The argument that a federal State article would be inconsistent with General Assembly resolution 422 (V) was invalid. The local legislatures in Non-Self-Governing and Trust Territories were not supreme; otherwise, the territories would not be colonies. Accordingly, the metropolitan countries were perfectly well able to apply the covenants in the territories under their control, whereas in federal States such application could be thwarted by local legislatures. Thus, there could be no comparison between a federal and a territorial clause.

6. To claim that a federal clause implied discrimination against unitary States was to confuse domestic legislation with international instruments. Within a State it was a matter of elementary law that there should be no legal discrimination against any section of the people. International conventions were commitments assumed voluntarily. States should therefore examine the validity of such instruments and then review their domestic legislation. There was no compulsion to accept international obligations, but nations tended to vie with one another in showing how progressive they were. Unitary States would appear more progressive because they could apply the covenants to all their nationals, and the federal States would seem to lag behind because they could not do so. There would be no real discrimination.

7. Neither was a federal State clause unnecessary. The federal authority normally assumed treaty obliga-

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

tions only for war or defence. The analogy did not hold good for social matters.

8. The Yugoslav representative's argument that the federal authority could consult the constituent units before ratifying and then ratify on behalf of the entire State would not provide as good a solution as the inclusion of a federal State article. If the units did not agree on all articles, the State would not be able to ratify, whereas, if it ratified subject to a federal clause, the federation would be bound and so would the states, to the extent of their powers.

9. The objection to ratifying with reservations was that reservations were made by authorities with certain powers; if they did not have full competence, they would not have the competence to make reservations. In view of their anxiety to implement the covenants, most countries would ratify, subject to the limitations imposed by their constitutions.

10. He would therefore support the Australian draft resolution (A/C.3/L.374).

11. He could not support the Afghan amendments (A/C.3/L.387), since decisions should not be left to the Commission on Human Rights, but should always be taken by the General Assembly itself.

12. Mr. SHAH (Pakistan) said that many of the difficulties raised by those who were in favour of the inclusion of the federal clause might be imaginary; they certainly could not be foreseen. He was inclined to fear that the federal clause might become a stalking horse for delegations anxious to evade their responsibilities, as Article 2, paragraph 7, of the Charter of the United Nations had become, as a result of far-fetched interpretations. Delegations represented sovereign States, not federal or unitary governments, and voted as sovereign States on the articles of the draft covenants; but when it came to the question of signing the covenants, they transformed themselves into federal States and claimed that they were unable to sign. The covenants were international instruments and, as international responsibilities were assumed by the federal authority even in federal States, a federal government should find no difficulty in ratifying.

13. The covenants would deal with elementary and fundamental human rights; if any State doubted that such rights would be respected in one of its provinces, it should look into the matter. Most of the rights already existed in federal legislations and it was very unlikely that constituent governments would raise any objections to them. If the representative of a federal State signed the covenants without reservations, it could not be true that the constituent states would never make any necessary change in provincial law.

14. Most of the difficulties anticipated between federal governments and their constituent states would be met by consultation before ratification. It was curious that some of the delegations which had taken such a leading part in drafting the covenants should now be advocating a reservation. It would be inequitable for the covenants not to be equally binding on all States.

15. It was, however, for the federal States themselves to decide whether it was necessary for them to have a federal clause included. He would therefore abstain on the Egyptian draft resolution, unless the Afghan amendments were adopted.

16. Miss MAÑAS (Cuba) said that no restrictions on the enjoyment of the human rights stated in the draft covenants should be permitted. Those rights were universal and there were no such limitations in the United Nations Charter. No reason convincing in international law could justify the inclusion of a federal State article in the draft covenants. She did, however, appreciate the vital importance of such a clause to the federal States and therefore believed that the Commission on Human Rights should be given another opportunity to improve and complete the draft covenants so that they would be widely accepted. The Commission would have all the documentation at its disposal, especially the records of the discussions.

17. She would therefore vote for the Australian draft resolution.

18. Mr. JOUBLANC RIVAS (Mexico) believed that the draft covenants by their very nature could not embody a federal State article, since their structure and purpose did not admit of restricted application. A federal clause would entail unequal application.

19. Although Mexico was a federal State, it would not be affected by the lack of a federal clause because international instruments were applied throughout the national territory, with the reservations made at the time of signature or ratification. Everything pertaining to human rights was a federal matter in Mexico; the right of *amparo*, widely acclaimed as a model concept, protected all individual freedoms, both of nationals and of foreiners. A federal clause would discriminate against certain groups within the national territory.

20. He would support the Egyptian draft resolution.

21. Mr. ESTRADA DE LA HOZ (Guatemala), introducing two amendments (A/C.3/L.388) to the Egyptian draft resolution, said that he regarded it as the duty of unitarian States such as his own to take a close interest in the question of the federal clause, just as it behooved the smaller States to stand up for the human rights latterly neglected by the major Powers which had once enshrined those rights in the Bill of Rights, the United States Constitution and the Declaration of the Rights of Man and of the Citizen. As federal States Members of the United Nations were many and large, the question concerned many millions; if the federal clause were included in the draft covenants, humanity would have to be classified into unitary human beings, enjoying human rights, and federal human beings, deprived of those rights by their governments. Moreover, tyrannical rulers in unitary States would also use the clause as a pretext for depriving their subjects of such rights. His concern was to see human rights respected in areas where they were not yet enjoyed.

22. The federal clause would discriminate in favour of federal States and thereby weaken the United Nations by attacking its basic principle, which was the legal equality of sovereign States. Furthermore, the differences between, for example, the Soviet Union, the United States of America and the British Commonwealth with regard to the division of powers between central and regional authorities made it difficult to decide to which States, or groups of States, the clause was intended to apply.

23. The doctrine that international treaty-made law constituted part of a State's domestic law originated with the United Kingdom and the United States of America and had been incorporated in the constitutions of many other States, including Guatemala; the United

Nations had reaffirmed the principle, emphasizing that domestic legislation should not prevail over international undertakings, and that the latter should not be abrogated unilaterally. The Charter of the Nürnberg Tribunal expressly applied the same principle to human rights. The federal clause was not justified in the jurisprudence of the federal States, the Charter, or the Universal Declaration of Human Rights. It was paradoxical that federal States should vote on the covenants in the General Assembly as though they were unitary States and proceed to implement them as though they were each a group of sovereign states.

24. The purpose of his amendment was to seek the expression of a legal opinion on the question, on which the Committee was equipped to give only an opinion from the social point of view.

25. Mr. CASTRILLO (Bolivia) was opposed to the Australian draft resolution; it would unnecessarily defer consideration of the federal clause and simply repeat the delaying tactics which had been used so often previously.

26. The Third Committee was hardly competent to discuss the federal State article in any case. It was really a question for the Sixth Committee to consider, although the delegations which were opposed to the adoption of the draft covenants on human rights claimed that the question was social rather than legal. The distinction was rather between the legal aspect and the real situation.

27. The Egyptian draft resolution was timely, but might lead to a restricted application of the covenants. He would support it only if the second Afghan amendment (A/C.3/L.387) was adopted.

28. The proposal made in the Guatemalan amendments (A/C.3/L.388) was interesting, but it fell within the purview of the Sixth Committee rather than the Third.

29. Mr. REYES (Philippines) observed that in voting for General Assembly resolution 421 (V), part C, his delegation had not intended to commit itself in any way with regard to the substance of a federal State article. That resolution was not a definite instruction to the Commission on Human Rights to include a federal State article in the draft covenants on human rights; the operative word was "study". The securing of the maximum extension of the covenants to the constituent units of federal States might be achieved by other means, such as reservations, if they were permitted; the question of inclusion of the article thus remained moot.

30. He could not support so drastic a proposal as that of the Egyptian representative, in view of the formidable difficulties confronting some federal States. He would not oppose the drafting of a federal State article, although he doubted whether a single article would suffice, as federal States were so varied in complexion. The matter was primarily political, and accordingly, the General Assembly itself should draft the text or else give the Commission on Human Rights definite instructions how to draft it so as to safeguard the integrity of the covenants and secure the widest possible application. He could not, therefore, support the Afhan amendment. He could not support the Egyptian draft resolution because he wished an article to be drafted, and he would abstain on the Australian draft resolution because the drafting should be done by the General Assembly.

31. Mrs. AFNAN (Iraq) expressed her appreciation of the constitutional difficulties of the United States of America and Canada, but felt that the countries of Asia and Africa were confronted with even greater difficulties. They had to combat the effects of thousands of years of inertia, privilege and superstition. Sixty nations of heterogeneous racial, linguistic, economic and historical background had always to make great efforts to find common ground; compared with such efforts the constitutional problems confronting federal States did not appear so formidable. It was true that the aim of much international action was to assist in the solution of individual problems; but it was for the federal States to find their own solutions in that instance, and she did not feel called upon to break the universality of the draft covenants by supporting the inclusion of the federal clause.

32. Mr. JUVIGNY (France) observed that the question of the federal clause was still before the Commission on Human Rights and there was no need for the Third Committee to make a fresh decision at that stage. The second Afghan amendment (A/C.3/L.387) took that fact into account but had two defects. First, it did not appear that the Commission on Human Rights was entitled to decide independently whether or not a federal clause should be inserted in the covenants on human rights. Secondly, if the Commission decided to include the clause, the amendment contained no instruction to the Commission to draft it.

33. There was no need to reiterate an invitation to the Commission already extended by General Assembly resolution 421 (V), part C, which would remain valid unless it was cancelled by adoption of the Egyptian draft resolution. Also the Commission had before it the existing proposals for a federal clause, to which more might be added at its next session, and an Economic and Social Council resolution inviting it to complete its work on the draft covenants, which would seem to imply that the Commission should deal with the federal clause.

34. He was not opposed to the procedure proposed in the Australian draft resolution, but felt that, in any case, the States, specialized agencies and non-governmental organizations which had received the Commission's last report (E/2447) woud probably include opinions on the federal clause in the observations they had been invited to submit.

35. Mr. McGUIRE (Australia) said that it was poor logic to insist, in a desire to speed up the work of the Commission on Human Rights, that the Commission should not consider a federal State clause. There was little use in hastening the completion of the covenants if federal States were thus barred from acceding to them. The fact that the Commission had not yet arrived at a decision on the federal State clause showed that the question was a difficult one. The Third Committee was not justified in saying that because the Commission had encountered difficulties the matter could not be discussed further.

36. The representative of Egypt had said that the difficulties federal States would meet in acceding to the covenants were matters of domestic concern only. But it would not be possible for any representative of a federal State to act in disregard of his country's constitution. The Egyptian representative was overlooking the initial difficulty, namely, that some of the provisions of the covenants were not exclusively within the jurisdiction of the federal government. It was

not relevant to say that not all federal States encountered that difficulty.

37. The argument that the inclusion of the federal State clause would make it possible for certain States to avoid their obligations under the covenants was only speculation, and the Committee should not base its decisions on speculation, but should concentrate on the practical question whether a final decision should be taken on the federal State clause. His reference to General Assembly resolution 421 (V), part C, had apparently been misunderstood; he had merely stated the two purposes underlying that resolution, namely, the need to gain the maximum extension of the covenants to the constituent units of federal States, and the need to meet the constitutional problems of those States.

38. The Egyptian representative's reference to the constitutional difficulties of federal States as being merely domestic ones did nothing to solve the problem. The representative of Egypt had said he was not asking the federal States to alter their constitutions, but that there were other ways to get round their difficulties. That point brought him to the Saudi Arabian representative's question whether the federal States' difficulties could be met by making reservations when signing the covenants instead of having a federal State clause in the covenants. That question could not be answered in the theoretical form in which it was asked. He had heard only one assertion from the Egyptian representative on that point, namely, that the federal States' difficulties could be met by reservations. No details had been given. Until the use of reservations as constituting an adequate alternative to the inclusion of a federal State clause had been demonstrated, no satisfactory reply could be given to the question.

39. It could not be seriously suggested that it would be better for federal States to make blanket reservations on articles in the covenants which were primarily the concern of their constituent states. In the absence of any detailed discussion on reservations it would be better to leave the question of the federal State clause to the Commission rather than to have the General Assembly take a decision immediately.

40. If the General Assembly decided that there should be no federal State clause, any representative approving that decision should take it in the full and responsible understanding that he was making it virtually impossible for some States to accede to the covenants.

41. Regarding the amendments submitted by the representative of Afghanistan (A/C.3/L.387) to the Egyptian draft resolution (A/C.3/L.366), he could agree with the first because it concurred with his delegation's opinion as expressed in his previous statement (519th meeting). He could not agree with the second amendment because he considered, as did the Indian representative, that the General Assembly, and not the Commission, should take the final decision.

42. Mrs. CALDWELL (Canada) stated that she took the same position on the Afghan amendment as the Australian representative. The reservations clause was in the same undecided situation as the federal clause, and was no alternative. Moreover, the Egyptian representative was a member of the Commission, on which Canada was not represented, and he or others might reject the reservations clause as he proposed to reject the federal clause. Furthermore, any exercise of reservations by a State for reasons of domestic policy would violate the principle of universality which the Egyptian and Yugoslav representatives had emphasized. The reservations clause was essentially an escape clause which would enable any federal State to write its own federal clause and to evade its undertakings; a properly drafted federal State clause would not be used for that purpose.

43. She agreed with the Australian representative that adoption of the Egyptian draft resolution would close the door to accession to the covenants by federal States.

44. She asked for a roll-call vote on the Egyptian draft resolution and would do so in the plenary meeting of the General Assembly, so that the responsibility for the closing of the door would be recorded.

45. Mr. AZMI (Egypt) expressed his appreciation of the frankness and clarity of the statements made in the Committee. He could not accept the first Afghan amendment calling for the deletion of the fourth paragraph of the preamble; its purpose was to point out that certain federal States, such as Brazil, Mexico and Yugoslavia, did not consider the insertion of a federal State clause essential and that recent developments in the United States of America had made that country's difficulties less acute.

46. The second Afghan amendment (A/C.3/L.387) could not be regarded as an amendment, since it reversed the purpose of the Egyptian draft resolution by retaining the question of the federal State article on the agenda of the Commission on Human Rights. The Afghan representative might have intended to save the Commission's time by inserting the reference to a decision on the matter; however, the French representative's interpretation of that intention seemed to be more accurate.

47. The Guatemalan amendments (A/C.3/L.388) implied that the question of the inclusion of a federal State article was purely juridical. That, however, was not the case. The political aspects of the question were the most important. That was why the General Assembly, as the most representative organ of the United Nations, and not the Commission on Human Rights or the International Court of Justice, which represented the technical and juridical aspects, should deal with the question in the first instance. He therefore welcomed the Philippine representative's view that the General Assembly should not only decide on the question of including the article, but should be responsible for drafting the text if it were decided that the article should be included.

48. The Indian representative had referred to the need for co-operation and had stressed that, if the article were included, the federal units which could accept certain provisions of the covenants would do so and at least three of the federal States would be enabled to sign the covenants. That appeal had been made in favour of the principle of universality; the principle would, however, be infringed by the inclusion of a provision differentiating between federal and unitary States. The Indian representative had further implied that the absence of a federal State article would prejudice the territorial clause. He himself believed that the omission of a federal State article could not in any way diminish the force or scope of the territorial cause.

49. The only logical conclusion that could be drawn from the French representative's statement was that another attempt could be made to reconcile the diver-

gent views on the matter. He therefore asked that representative to pursue his arguments to that conclusion.

50. Mr. JUVIGNY (France) recalled his previous statement that the debate could have been avoided by referring the question to the Commission on Human Rights, which in any case was still seized of the problem. He had not made a formal proposal to that effect because the sponsors of the draft resolutions and amendments might not agree that their proposals should not be put to the vote.

51. Mr. AZMI (Egypt) did not agree that the debate should have been avoided. The views of the sixty Member States on the question were most valuable. Moreover, he did not share the French representative's scruples about the submission of a formal proposal. He therefore submitted a draft resolution to the effect that the General Assembly, having considered the question of the inclusion of a federal State article, the records of the views expressed by representatives in the Third Committee, the Egyptian and Australian draft resolutions and the Afghan and Guatemalan amendments thereto, would, without voting on those documents, request the Secretary-General to transmit them to the Commission on Human Rights as soon as possible, with the instruction that the documents should reach the Commission not later than two weeks before the opening of its next session. That procedure would expedite the Commission's work.

52. He hoped that the Australian representative would be willing to accept the proposal.

53. Mr. P. CHENG (China) supported the Egyptian representative's appeal to the sponsors of draft resolutions and amendments to adopt that compromise solution.

54. Mr. McGUIRE (Australia) accepted the Egyptian proposal.

55. Mr. PAZHWAK (Afghanistan) pointed out that the provisions of the Egyptian proposal were fully covered in his amendment. There seemed to have been some misunderstanding of his use of the word "decide". It was self-evident that the question had already been decided by the General Assembly; any decision made by the Commission on Human Rights would in any case be referred back to the Assembly. If the Commission decided to include the article, the Assembly would be responsible for drafting it at its ninth session. In the contrary case, the Commission's views and those expressed at previous sessions of the Assembly would be transmitted to the General Assembly at its ninth session and the Assembly would take the final decision. The views of all representatives, even those who had been opposed to the Afghan amendment, would be taken into account in any event.

56. The decision taken by the General Assembly at its fifth session could be reversed only by the Assembly itself. There was no cause for hasty decisions, since the real difficulties of certain federal States could only be appraised after full consideration. The authoritative opinion of the Commission on Human Rights had to be sought; the Assembly could reach a well-considered decision on the basis of the Commission's consideration of all the available data.

57. His amendment covered the new compromise proposal, as well as the Australian draft resolution. Moreover, the instructions to the Commission on Human Rights were direct and clear. In order to make the text more acceptable to certain delegations, however, he was willing to insert the phrase "and the proposals and suggestions made in the Third Committee" after the word "session" in his second amendment.

58. Mr. ESTRADA DE LA HOZ (Guatemala) accepted the Egyptian proposal.

59. The CHAIRMAN pointed out the implications of adoption of the Guatemalan amendment. Under Article 65 of the Statute of the International Court of Justice, the Court could give an advisory opinion on any legal question at the request of whatever body might be authorized by or in accordance with the Charter to make such a request. Under General Assembly resolution 684 (VII), whenever any committee contemplated making a recommendation to the General Assembly to request an advisory opinion from the Court, the matter might be referred to the Sixth Committee for advice, or the committee concerned might propose that the matter should be considered at a joint meeting of itself and the Sixth Committee.

60. Mr. BAROODY (Saudi Arabia) proposed the adjournment of the meeting.

The meeting rose at 6.15 p.m.

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