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CONTENTS: Draft international convention on human rights: measures of implementation (E/800, E/CN.4/168, E/CN.4/274).

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| | Mr. CASSIN | France |
| | Mr. GARCIA BAUER | Guatemala |
| | Mrs. MEHTA | India |
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| Mrs. VERGARA | Catholic International Union for Social Service |
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| Mr. BEER | International League for the Rights of Man |
| Miss SCHAFER | International Union of Catholic Women's Leagues |

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: MEASURES OF IMPLEMENTATION (E/800, E/CN.4/168, E/CN.4/274)

The CHAIRMAN, placing before the Commission the United States and United Kingdom working paper (E/CN.4/274), opened the general debate on measures of implementation.

Mrs. MEHTA (India) supported proposals 1, 2 and 3 embodied in the report of the Working Group on Implementation (Annex C, document E/600). Those proposals had not been considered in detail by either the Drafting Committee or the Commission; comments by Governments indicated, however, that most States were in favour of setting up a standing committee, the function of which would be essentially one of conciliation. Only after such a committee had been set up would the question of establishing an international court of human rights arise; but the decision to set up a committee would not prejudge the eventual establishment of a court.

She wished to draw the Commission's attention to a most important question raised in the Secretariat memorandum on measures of implementation (E/CN.4/168, paragraph 21). Before any decision was taken with respect to

what measures of implementation were considered preferable, the Commission must decide whether the measures should constitute a part of the draft covenant or be embodied in an independent document.

Mrs. Mehta strongly advocated the second course. The Commission had already contemplated the possibility of further covenants on human rights; any machinery set up in an independent protocol would apply to all such covenants. Furthermore, it could be invoked in any case of violation of human rights by any Member State of the United Nations, whether or not that State had ratified the covenant. States which did not ratify the covenant were still obliged by the Charter to promote respect for human rights and fundamental freedoms, and had consequently pledged themselves, for example, not to pass discriminatory laws. If machinery for implementation were set up independently of the draft covenant, its application would not be limited to the protection of persons living on the territory of States ratifying the covenant, but would extend to the population of all Member States of the United Nations. It was therefore of the greatest importance for the Commission to decide whether or not the measures of implementation were to form an integral part of the draft covenant before it proceeded to formulate the measures themselves.

The CHAIRMAN, speaking as the United States representative, said that in her opinion measures of implementation should be embodied in the draft covenant itself; otherwise some States might subscribe to the covenant but not to the measures, which might render the covenant inoperative. That the two should form a single document had been the view taken by the Economic and Social Council and the General Assembly. While it was true that the covenant might be revised in the light of experience, the measures of implementation would be subject to the same revision.

With regard to the United States and United Kingdom suggestions (E/CN.4/274), she stated that in the opinion of the United States Government machinery for implementation should be set up on a limited scale at first, in order both to make it acceptable to the greatest number of Governments and to avoid setting up a complicated procedure which might prove ineffective. Further steps could be taken in the light of experience. At the existing stage, it would be better to set up a committee which could deal only with complaints lodged by States, and not with those lodged by individuals or groups of individuals. One of the most important suggestions in the proposal was that the committee should report its findings for publication; cases of violation of human rights would thus be brought to public notice. The committee would also be able to ask the International Court of Justice for an advisory opinion.

/Those suggestions

Those suggestions were made in a tentative manner; the United States delegation felt strongly, however, that caution should be exercised in setting up international machinery which would be in the nature of an experiment.

Mr. SHANN (Australia) stated that his Government's interest in the question of the implementation of human rights was well known. That implementation had two aspects; the domestic, which was raised in articles 2 and 24 of the draft covenant and discussion of which should be postponed until those articles were reached in the normal course of work; and the international, regarding which the Australian delegation had submitted suggestions, contained in document E/CN.4/AC.1/27, to the effect that provision should be made in the draft covenant itself for an international court of human rights, to which individuals and associations, as well as States, should have access. If there was to be a full and effective observance of human rights, it was necessary to provide a tribunal which could enforce it. The International Court of Justice was not such a tribunal, because it could not deal with individual complaints; a special international court, with specially chosen judges, was needed.

The main argument against such a court was that it might involve interference in the internal affairs of States or undermine the sovereignty and independence of particular States. Those who believed in the idea of an international bill of human rights must, however, be prepared to accept certain restrictions of national sovereignty. France, under its new constitution, was prepared to accept, on the basis of reciprocity, limitations of sovereignty necessary to the organization and defence of peace. All Members of the United Nations had accepted certain obligations under the Charter and should not object to a system which enforced those obligations.

Mr. Shann pointed out that the Chinese-United States proposal (E/CN.4/145) for a committee which might make recommendations in the event of the failure of direct negotiation between States had the grave defect of confining international action to violations by one State to which attention was called by another State. International action would thus become a matter of diplomatic intervention. The French proposal made the previous year, which provided for an international commission of eleven members with powers to investigate the complaints of States, associations and individuals and to make recommendations to the General Assembly, was much more acceptable, and the Australian delegation was prepared to support it if its own proposal failed to win the Commission's approval.

/The Commission

The Commission had before it suggestions with respect to four different kinds of international machinery: an international court of human rights, the enlargement of the scope of action of the International Court of Justice, a commission and a committee. Still further proposals might be made. Mr. Shann suggested that the Commission should first decide, in principle, what general line to follow, and should then ask the Secretariat to prepare a document embodying all the suggestions with respect to that particular method of approach. That document could then be used as a basis for drafting. Such an action would not, of course, prejudice later proposals in the light of experience; it would, however, permit the Commission to direct and concentrate its efforts.

In conclusion, he stated that the Australian Government was convinced that an international court of human rights was the only really effective means of implementation, and had noted with satisfaction decisions taken at the Bogota Conference on the setting up of a similar body for the American States. Should the Commission not be ready to adopt that proposal at the present time, he hoped that an article would be included in the covenant enabling such a court to function if it should be established in the future and that the question of the court would be referred for study to the International Law Commission.

Miss BOWIE (United Kingdom) said that, in the opinion of her delegation, the measures of implementation should be included in the covenant, as the attitude of Governments towards some of the articles would certainly be governed by the tenor of the measures of implementation. She agreed with the United States opinion that States should be called upon to ratify both the measures of implementation and the draft covenant at the same time, for if they were to ratify the covenant only, that document would become simply a second Declaration of Human Rights.

She supported the suggestions contained in document E/CN.4/274. A simple procedure of conciliation was best at that initial stage. The public must be educated with respect to the provisions of the Declaration and the covenant before it could be allowed to submit complaints directly to an international body. What was required at the existing stage was a body to sift facts and to give them wide publicity. The danger of providing for a more complicated machinery, without previous experience, was that the whole structure might collapse under its weight.

Miss SENDER (American Federation of Labor) said that the American Federation of Labor took great interest in the question of measures for the implementation of the covenant on human rights, because it considered that the covenant would not be complete without them. The main argument which had been advanced against the inclusion of implementation measures in the covenant was that it would be premature, but she felt that such measures could not be separated from the covenant itself.

It was true that the economic and social order within a country was the concern of that country itself, but it was not so with human rights, which were within the province of international law and therefore required enforcement measures. No enforcement machinery, however, would be adequate unless it embodied provisions enabling individuals or associations to bring complaints. The provisions so far visualized concerned States alone, and States might hesitate to bring a complaint before an international body lest by so doing they should jeopardize international relations. That hesitation, however, would have no force in the case of associations or individuals. The Universal Declaration of Human Rights had aroused hope and expectation among the peoples of the world, which would be disappointed if petitions were declared inadmissible. Petitions must, of course, be carefully sifted and rules must be set up governing their admissibility. The question of which organizations should be entitled to present petitions could only be decided by the States which ratified the covenant. Miss Sender suggested the possibility of establishing a standing commission, which might also be necessary to supervise the implementation of the covenant and investigate violations of it. She pointed out that the United Nations had already recognized the principle of individual petitions in Trusteeship Council procedure, and it was therefore not entirely without experience in that field.

She also hoped that the idea of an international court would be borne in mind. Whatever decision were taken on that, she felt that the principle of individual petitions should be admitted; it would strengthen the confidence of the masses in international co-operation.

Mr. ENTEZAM (Iran) said that in his delegation's opinion it would be useful to include measures for implementation in the covenant. The Universal Declaration of Human Rights had already defined human rights, but it had only the force of a moral obligation; the covenant must

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be a contractual obligation, and in ratifying it States must know that they would be responsible before an international tribunal for the obligations assumed.

That did not mean that the measures for implementation could not in the future be separated from the covenant, as a sort of protocol, if it was thought desirable to revise them. It was not, however, right to allow States to ratify the covenant without at the same time making clear the obligations which they thus assumed.

The CHAIRMAN proposed that the Commission should vote whether measures for implementation should be included in the covenant or should form a separate protocol.

Mr. CASSIN (France) said that the previous year his country had favoured the inclusion of implementation measures in the covenant and the establishment of a new body for conciliation and investigation. It had not excluded the idea of an international court but had felt that the time was not yet ripe for such an organization.

The speech of the Indian representative and the Secretariat's memorandum (E/CN.4/168) had thrown new light on the question of the inclusion of measures for implementation. Mr. Cassin felt that if such measures were included in the covenant, States which did not ratify the covenant should not, however, enjoy the advantage of not being liable to enforcement measures, since the Charter itself contained provisions concerning human rights which all States had a moral obligation to carry out.

An argument which had much weight in his country was that of reciprocity. It was felt that States which had themselves undertaken no obligations must not be in a position to exercise supervision over those which had. If separate machinery were established for the implementation of the covenant, it might give States which had not ratified the covenant a unilateral right of control over those which had. His country was in favour of increasing reciprocity, and would not sign any agreement which made unilateral supervision possible. A fundamental point was that it should be those countries ratifying the covenant which supervised its implementation.

Mr. Cassin pointed out that there was much to be said on both sides of the question; he asked that members of the Commission should be given time to reflect and that a vote should not be taken on the matter immediately.

/His country

His country maintained its position on the question of establishing a new body for conciliation and investigation. Its point of view was less bold than that embodied in the proposals of the Australian representative, which he felt would have more chance of success on a regional basis. He pointed out that the question of the establishment of a regional court on human rights was being studied in South America and also in Europe. He was not hostile to the idea of a court but reserved his position on an international court. He wished for time to reflect on the more modest proposal put forward by the United Kingdom and United States delegations with the support of China. He felt that in certain cases the task might be facilitated by the establishment of a small ad hoc conciliation committee. The experiment of setting up such a committee had, however, been tried by the League of Nations in the question of the protection of minorities, with indifferent results. He therefore emphasized that such a method could only be applied to certain cases and that each question must be considered on its merits.

On the question of petitions, as had been pointed out by the representatives of India and of the American Federation of Labor, if a complaint was made by a State it would appear that that country was attempting to raise a political issue. Moreover, to exclude complaints by individuals and associations would not be in accordance with the spirit of the Charter, since it was a fundamental human right to appeal when such rights were violated. If a negative decision were taken on that matter it would have a grave effect on public opinion and might mean that the Commission was taking a backward step, since provisions for individual petitions had already existed under the League of Nations, and existed under the United Nations in the Trusteeship Council. Moreover, the right of individuals to bring complaints before an international body already existed: complaints might be brought to the International Labour Organization for violation of ILO Conventions. By excluding the right of individual complaint, the Commission would therefore be establishing a much more rigid system than that which already existed.

He thought the objections raised by the USSR delegation were less serious than those of some other countries, and that it might be possible for the USSR to reach agreement with the views of other countries. It might also be possible to reconcile the ideas put

forward by the United States and the United Kingdom with those of France. His country, for its part, undertook to do everything possible to bring about further progress, while hoping that States would consider the serious consequences of denying the right of individual petition.

Mr. ENTEZAM (Iran) asked the French representative how he visualized application of the principle of reciprocity in measures for the implementation of the covenant. If, for example, one country recognized the obligatory jurisdiction of an international court and another did not, it would still be possible for the latter to bring any question it wished before the court through the intermediary of a third country which also recognized the court's jurisdiction.

The CHAIRMAN called on the representative of the International League for the Rights of Man.

Mr. BEER (International League for the Rights of Man) said he had been very glad to hear the representatives of France and of the American Federation of Labor defend the right of individual petition, since that relieved him of the obligation of going into the subject in detail.

The League, in a memorandum to the Economic and Social Council, had stressed the necessity of making the right of individual petition the basis of any system of implementation of human rights. It must be a complete and absolute right, without limitations. The League had also stressed the necessity of establishing a permanent committee, appointed by the Economic and Social Council or elected by the General Assembly, which would have the right to examine petitions or communications concerning human rights, to ask countries for their comments on them, to carry out investigations on cases arising out of them, to recommend that Governments should carry out their obligations, and to undertake conciliation. The committee should also publish an annual report on the position of human rights in the world. It should be able to request the intervention of United Nations organs when necessary, and should have the right to place questions concerning human rights on the agenda of the Economic and Social Council, the Trusteeship Council

or the General Assembly, or to refer such questions to the International Labour Organization. It should also be able to bring such questions before the International Court of Justice or before a special court on human rights.

He again stressed the importance which the League attached to the right of petition and supported all that had been said concerning it by the representatives of the American Federation of Labor and of France.

The legacy of the war and of the atrocities committed under the Hitler regime must not be forgotten. It should be remembered that the League of Nations had established the right of petition for minorities, thanks to which it had been able to intervene in the case of Upper Silesia. The United Nations should extend that possibility of intervention.

Mr. PAVLOV (Union of Soviet Socialist Republics) remarked that there were two forms of implementation. The first consisted in national implementation in each individual country. The second implied international pressure on individual States. He reminded the Commission of the comments made by the USSR delegation at previous sessions of the Council, and drew attention to document E/CN.4/154, referred to in Annex C of document E/800, which contained the Soviet Union's views on the entire field of implementation. He felt that international enforcement signified an attempt to intervene in the domestic jurisdiction of States, and that it would lead to violation of the Charter and would result in an increase of international friction. He did not therefore think that there should be international measures of implementation, either in the covenant or as a separate document. All questions of enforcement should be left to the competence of the individual States.

Referring to the consideration of petitions by the Trusteeship Council, he stated that those petitions were presented because the peoples of Non-Self-Governing Territories did not possess the right to implement human rights in their own territories. International enforcement would place sovereign States in the same position as that of Non-Self-Governing Territories.

He felt, therefore, that the first form of implementation might be included in the covenant, but that the second form could not be included without violation of the Charter. It was essential that the Commission

should decide what sort of measures it was considering for implementation, before it decided whether those measures were to be included in the covenant or in a separate document.

Mr. AQUINO (Philippines), referring to the observations made by the representatives of France and of the Soviet Union, pointed out that some delegations seemed to fear that the measures for implementation which the Commission might adopt would constitute a flagrant violation of national sovereignty. It was easy to find fault with plans for the advancement of human rights. The Declaration of Human Rights and the covenant would, if adopted, constitute an achievement in the field of human rights, and their adoption would constitute a voluntary forfeiture of national sovereignty and not an invasion of it. He could not agree that a body set up by the common agreement of Member States could infringe the national sovereignty of States.

His delegation believed that the United Nations should try to set up an international judicial body, to which not only Member States but also the peoples of Trust Non-Self-Governing Territories should have free and easy access. The means for making such access available should be left to the consideration of the Members of the United Nations.

The representative of France feared that the Commission would infringe the rights set out in the covenant and the Declaration if it denied individuals the right of petition. If, however, the Commission set up an international body to decide on the violation of human rights, it must decide on certain rules of procedure. He believed that the responsibility for the presentation of petitions should lie with Member States, and that only through them should individuals have recourse to an international body. In States, however, where a totalitarian regime was in power and where human rights were violated, individuals should have access to such an international body.

He pointed out that much progress had been made in the field of human rights, and that the rights of individual States should not constitute an obstacle to that progress. The Commission should set up a body to deal with violations, and such a body should have the power to enforce its decisions.

Mrs. Hansa MEHTA (India) pointed out, with respect to the question of national sovereignty, that the protection of human rights

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was the responsibility of the United Nations under the Charter, and that the United Nations was therefore bound to interfere in the affairs of States when it was necessary for the protection of human rights. Thus, the question of national sovereignty should have been raised when the Charter was signed, and not at the existing stage.

Mr. GARCIA BAUER (Guatemala) recalled that when the Universal Declaration of Human Rights had been drawn up in Paris, he had pointed out that measures for implementation were extremely important. He now restated his opinion that matters of implementation constituted the most important point with regard to human rights. As the representative from India had said, the old concept of national sovereignty had given way to a new concept of restricted national sovereignty with the signing of the Charter. That was the purpose of the Charter in its enunciation of human rights, as for instance in Article 1, paragraph 3, which spoke of the encouragement of respect for fundamental human rights and in Article 55, paragraph 3. The United Nations could only ensure respect for human rights by regulating their sphere of application. The principle of national sovereignty could no longer be maintained; the General Assembly had proved that the United Nations could deal with the violation of human rights in Member States and even in non-Member States.

With regard to the question of implementing human rights, he felt that it was important to follow a given procedure, and he agreed with the suggestion made by the Indian representative that the Commission should consider the Secretary-General's suggestion concerning protocol. The Commission could then decide at a later stage if the measures for implementation were to be embodied in the covenant or in a separate document.

The CHAIRMAN suggested that the discussion of measures of implementation should be postponed until 2 June. The Commission could return to the discussion of article 11 of the covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) asked the Chairman whether the Commission would consider the USSR draft for a new article 11.

The CHAIRMAN called for a vote on that question.

The proposal to consider the USSR draft for a new article 11 immediately was rejected by 7 votes to 3, with 4 abstentions.

The CHAIRMAN stated that this new draft article would be considered later, together with other proposed new articles.

The meeting rose at 12.50 p.m.