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CONTENTS

Chairman: Mrs. Halima EMBAREK WARZAZI (Morocco).

AGENDA ITEM 62

Draft International Covenants on Human Rights (continued)

ARTICLES ON MEASURES OF IMPLEMENTATION OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (continued) (A/2929, CHAP. VII; A/5411 AND ADD.1-2, A/5702 AND ADD.1, A/6342, ANNEX II.B, PARTS IV AND V; A/C.3/L.1366/ADD.3-5, ADD.6 AND CORR.1 AND ADD.7, A/C.3/L.1402/REV.2)

1. Mr. BENGTSON (Sweden), speaking also on behalf of the delegations of Denmark, Finland, Iceland and Norway, said that since those delegations had long been striving for the insertion in the Covenant on Civil and Political Rights of an article on the right to individual petition, they had naturally supported the Netherlands amendment to that effect on document A/C.3/L.1355. Although they would have preferred an obligatory article, they had recognized that that right was likely to be accepted only in the form of an optional provision. They were therefore satisfied with the new draft article 41 bis proposed in document A/C.3/L.1402/Rev.2. While there might be some risk that the right might be abused, it was essential to have confidence in the judgement of the human rights committee as to what complaints would be examined. It was unlikely that the committee would be flooded with petitions.

2. His delegation understood that the words "subject to its jurisdiction" in paragraph 1 of the proposed article referred only to physical control and nationality. In other words, complaints could be lodged only by persons under the physical control of the States Parties accepting the optional system of petitions or by nationals, whether or not they were within their State's physical control. His delegation would have preferred a somewhat broader expression that would have included, for example, a person whose human rights had been violated in a country from which he had been forced to flee. Such a person should be able to submit a complaint even though he was not a national of the country where the violation had taken place.

3. His delegation failed to see the merit of the suggestion that the article concerning the right of individual petition should be attached to the Covenant as a separate protocol. The rights of the individual should be at least as important as the rights of the State, which were safeguarded by the other measures of implementation.

4. For those reasons, the five delegations would support the draft article 41 bis proposed in document A/C.3/SR.1402/Rev.2, for without such provisions the value of the Covenant as a whole would be significantly diminished.

5. Mr. BAHNEV (Bulgaria) said that, far from promoting the observance of the rights of individuals, the proposed new article 41 bis (A/C.3/L.1402/Rev.2) might even delay general progress in that direction. In the first place, as the drafting of the substantive articles showed, the main aim of the Covenant, as an international treaty, was to define the obligations of States to ensure a certain standard of observance of the human rights of their citizens. Such contractual obligations could, and often did, have a significant effect on domestic legislation. The Universal Declaration of Human Rights was a case in point. In the case Missouri v. Holland in 1920, the United States Supreme Court had found that the United States Congress could enact legislation to ensure fulfilment of obligations assumed under international treaties even if it had no such power in the absence of such a treaty. On the other hand, despite his sympathy for the right of petition, Mr. Humphrey, the former Director of the Division of Human Rights, had voiced doubts that the United States Senate would permit direct recourse by United States citizens to any instance higher than the Supreme Court. Clearly, any consideration of individual petitions would constitute interference in the internal affairs of sovereign States. A State could be compelled to carry out its obligations under international instruments in the field of human rights in respect of its own citizens only through contemporary international law, and States were the only subjects in the machinery of compulsory measures of international law. Only the most appropriate measures of implementation should be included in the Covenant and the discussion had shown that the majority of States could accept the right of complaint only on an optional and State-to-State basis.

6. Secondly, political considerations could not be entirely disregarded as far as the international implementation of human rights was concerned. That could be seen, for example, from the fact that under

article 30, paragraph 1, of the draft Covenant the human rights committee might not include more than one national of the same State. Moreover the procedure envisaged in the proposed article 41 bis would be based on the decisions of a political body and it might therefore often be employed to further the political interests of a stronger State or to interfere in the affairs of a weaker State. The fact that there might be tens of thousands of petitions showed the extent to which the international atmosphere might be poisoned.

7. Thirdly, the individual looked in the first instance to the society to which he belonged for the satisfaction of his moral and material needs and, under positive law, human rights existed only to the extent that they could be effectively guaranteed by each individual State. The system envisaged in the proposal under discussion would not necessarily ensure that complaints were satisfactorily resolved; the human rights committee would have no judicial functions and could ensure neither compensation nor remedy for violations of human rights. In fact, the proposed article 41 bis would not change the present situation as far as individuals were concerned, since no complaint could be satisfactorily redressed without the consent of the State concerned. Law must reflect life or become a dead letter. The right of individual petition corresponded neither to contemporary international reality nor to the nature of the present Covenant. Neither the optional nature of the proposal nor its procedure could be considered a solution to the problem of ensuring respect for human rights. The proposals might foster hope on the part of individuals which could never be realized and thus lead to disillusion. Since it was most unlikely that nationals of a State would know whether or not that State had made the declaration referred to in paragraph 1 of the proposed article, the human rights committee would probably be swamped with inadmissible petitions.

8. Fourthly, the proposal in document A/C.3/L.1402/Rev.2 left many points unsettled: for example, it would clearly be very difficult for the human rights committee to determine whether or not the right of petition had been abused in any particular case and it was not clear to what extent the citizens of a State who were resident abroad would be subject to the jurisdiction of their own State.

9. For those reasons, his delegation would be unable to support the proposed new article 41 bis.

10. Miss TABBARA (Lebanon) said that her delegation had supported the inclusion in the Covenant of an optional article on the right of individual petition. While it had welcomed the Netherlands proposal in document A/C.3/L.1355, it had found some parts of that text rather vague. Accordingly, her delegation, with others, had submitted a proposal (A/C.3/L.1402/Rev.1) based on the Netherlands proposal but which spelt out the petition procedure in greater detail. It had done so in the belief that that new proposal would receive the support of the majority of the members of the Third Committee and that the optional nature of the proposed article would permit other delegations to accept it.

11. However, after consultations with other delegations, it had developed that some representatives were opposed to the procedure envisaged and were under strict instructions to press for a text which they could support. Her delegation had therefore had to choose between a Covenant which would be ideal for some but unacceptable to others or a Covenant whose measures of implementation would be weaker than some might have wished but acceptable to most if not all members of the Committee. It had chosen the latter course and had been unable for that reason to become a sponsor of the revised proposal in document A/C.3/L.1402/Rev.2, which, however, it supported in principle.

12. Her delegation would support a formal proposal, if one was made, for the article to be made a separate protocol which would be annexed to the Covenant; if no such proposal was made, it would support an article on the right of individual petition which would be acceptable to the majority. She believed that a protocol such as she had mentioned could be drafted and adopted at the present session.

13. Mrs. AFNAN (Iraq) said that, from the point of view of her delegation, article 41 bis raised no question of a conflict between national and international sovereignty, inasmuch as voluntary acceptance of international obligations could not be construed as an even minor invasion or renouncement of sovereignty. Moreover, she was convinced that under the United Nations Charter the individual had in fact entered the international arena and that he would become a subject of international law through the implementation of his human rights. Her objections to the proposed article 41 bis were based on other grounds. She doubted that the proposal to give the human rights committee competence to receive complaints from individuals was in fact a step towards the implementation of human rights or was needed in the Covenant. With reference to paragraph 1 of the proposed article 41 bis (A/C.3/L.1402/Rev.2), the words "individuals, subject to its jurisdiction, claiming to be victims of a violation by that State Party of any of the rights set forth in this Covenant" seemed to solicit complaints to the human rights committee, which would be entitled to receive them when the Covenant had been ratified by ten States. The words which the Nigerian representative had proposed (1438th meeting) should be inserted at the beginning of paragraph 3 changed nothing, although they emphasized that the procedure for submitting communications would, under paragraph 1, be optional. The proposed procedure was subject to one condition: namely that persons claiming to be victims of a violation of any of their human rights enumerated in the Covenant must have exhausted all of available domestic remedies before submitting a communication to the human rights committee. In the first place, domestic procedures for the examination of a grievance, which ranged from the first investigation to adjudication by the State's highest court, frequently took years and, in the second place, she did not see how the committee could know whether or not all available domestic remedies had been exhausted.

14. With reference to paragraph 4 of the proposed article, she drew attention to the fact that it would be

impossible for the human rights committee, without an on-the-spot investigation and without reading all the proceedings of all the courts through which a particular case had passed, to determine whether the signature on a complaint was bogus or genuine, whether the complaint constituted an abuse and whether it was incompatible with the provisions of the Covenant.

15. With regard to the use of the word "confidentially" in paragraph 5, sub-paragraph (a), she felt that an individual who had exhausted all available domestic remedies—a very lengthy process—could hardly have done so without the knowledge of his Government; the word was therefore inappropriate.

16. With reference to paragraph 6, sub-paragraph (a), and the requirement for exhaustion of all available domestic remedies, she suggested that no Government would be prepared to concede that all the judgements handed down by its various courts had been erroneous and should be superseded by the decision of an international committee. In connexion with the proviso, in the same paragraph, that the same matter must not have already been submitted to another procedure, she recalled that, under the European Convention for the Protection of Human Rights and Fundamental Freedoms, some cases had been pending for two or three years, and asked whether it was intended that the human rights committee, on receiving a complaint, should ascertain from the Council of Europe whether the same complain had been filed with that body's Commission of Human Rights.

17. No constructive amendments to the proposal before the Committee were possible, because the basic approach of the proposed measure was wrong. The assumption of international responsibility in the sphere of human rights implied the ability to take action to assist those concerned. When an individual complained to an authority, he accepted that authority as invested with power. Under the proposed provision there would be complaints in great numbers, but no power to remedy them. Moreover, many of the complaints would probably have to be rejected since the individuals who made them would not know whether their Governments had accepted the competence of the human rights committee. It was untrue to suggest that States which favoured the right of individual petition had nothing to hide, while those which opposed it feared investigation; no State could say that human rights were never violated on its territory.

18. By accepting the Covenant, a State recognized that its implementation was a matter of international obligation. The State, in fact, was the only authority capable of protecting the individual in practice, and that authority, particularly in the case of the young nations, needed to be safeguarded and strengthened.

19. If the international community had not succeeded in outlawing war, it could not claim to be able to protect individual human rights. Furthermore, the Covenant could not be said to have universal validity if 700 million people were to be excluded from its purview by a mere show of hands.

20. The proposed article would not be a step forward, but would appear as an act of international demagogy, for it could not be implemented.

21. Since the Legal Counsel had given it as his opinion that there was no difference between an optional clause on the subject and an attached protocol, there should be no objection to the latter solution.

22. Mrs. SEKANINOVA-CAKRTOVA (Czechoslovakia) said that the right of individual petition was fully guaranteed in her country's Constitution, article 29 of which expressly laid down the right of individuals and organizations to submit their complaints to the pertinent authorities and the duty of those authorities to take responsible and prompt action thereon. Both in theory and in practice, the right of petition constituted one of the indispensable safeguards of the full implementation of human rights at the national level.

23. Such a concept of the right of petition was adequately covered in article 2, paragraph 3, of the Covenant, which the signatory States would undertake to implement. The principle that pacta sunt servanda was basic to international law and must surely be expected to apply to instruments drawn up by the United Nations, which was founded on the principle of international law. There was therefore no need to include in its implementation system an article providing for petitions to an international body.

24. The right of individuals to submit petitions to such a body was a very controversial issue, since it implied that individuals were subjects of international law. Her delegation held that States alone were subjects of international law and that individuals acquired rights or assumed duties in the international sphere only through the State. In its view, therefore, recognition of the right of individual petition on an international level in an international instrument of universal application would seriously conflict with the principle of State sovereignty.

25. The article proposed in document A/C.3/L.1402/Rev.2 would be of no value and would simply result in a flood of uninformed, unsubstantiated and perhaps malicious complaints to the human rights committee, from persons who would not have taken care to find out whether their Governments had or had not made the declaration provided for in paragraph 1. Indeed, it would discourage individuals from exhausting available domestic remedies, by diverting their attention to the international body. It would also be extremely difficult, as the Iraqi representative had pointed out, for the human rights committee to ascertain whether a communication was or was not admissible. Far from strengthening the implementation of human rights, the provision would weaken it, since that committee would in any case be able to do no more than forward its suggestions to the State and the individual concerned—the only two parties in a position to work out a solution in the first place. The suggested procedure would also tend to implant distrust between the human rights committee and the States parties, instead of creating the partnership of goodwill which would promote the observance of the human rights of every individual.

26. Mr. N'GALLI-MARSALA (Congo, Brazzaville) saw no need to include the proposed article 41 bis in the Covenant. The right of petition existed independently of the Covenant; any individual who so de-

sired, and who was in a position to do so, could complain of any violation of his rights. Furthermore, it would be very difficult to determine whether the individual or the State complained against was in the right. Finally, in some countries, such as South Africa, where human rights were openly denied, it would be literally impossible for the victims of injustice to transmit their grievances to an international body. His delegation would abstain in the vote on the proposed article.

27. Mr. BAZAN (Chile) said that his delegation strongly supported the introduction into the Covenant of the concept of the right of individual petition. That right was the basic implementation measure of the Covenant. The individual was supposed to be the direct beneficiary of the Covenant and should logically be entitled to initiate any complaint concerning denial of his rights. The right of States, under article 40, to lodge complaints against each other concerning violations of human rights was not enough. Experience had shown that States were usually reluctant on political grounds to avail of such a right. Individuals, however, did not have to take such considerations into account, and their action alone would give the Covenant the necessary dynamism to ensure the observance of the rights which it guaranteed.

28. Moreover, if the individual right of petition was not included in the Covenant, individuals would doubtless apply to other States to champion their cause, thereby giving rise to unfortunate political situations.

29. The individual right of petition was traditional in Latin America. The Washington Treaty of 20 December 1907, establishing a Central American Court of Justice in Costa Rica, had been the first international instrument to recognize the individual's right to be a party, in his own name, in international legal proceedings. The Council of the Organization of American States was at present studying three draft conventions on human rights, all of which included the right of individual petition.

30. Some delegations had advanced against the proposal to provide the right of individual petition the argument that State sovereignty must be preserved intact. They appeared to forget that no State was obliged to recognize the competence of the human rights committee; in fact, no State was obliged to accede to the Covenant. Those States which ratified the Covenant and accepted the individual right of petition would thus be doing so in the free exercise of their sovereignty.

31. The Covenant contained as yet no practical measure for the protection of the individual against the omnipotence of the State. It abounded, on the other hand, in provisions to protect the State against the defenceless individual. Moreover, it enabled a State to paralyse the human rights committee's procedure at will.

32. If the right of individual petition was not included, the very purpose of the Covenant would be negated. That would mark a grave set-back in the efforts to achieve increased observance of human rights.

33. His delegation congratulated the sponsors of document A/C.3/L.1402/Rev.2 and would vote in favour of their proposal; it would oppose any attempt to make the proposed article a separate protocol.

34. Mrs. BULTRIKOVA (Union of Soviet Socialist Republics) said that her delegation opposed the inclusion in the draft Covenant or in any document associated with it of any provision which would allow the human rights committee or any other organ to receive complaints from individuals or groups of individuals regarding alleged violations of human rights. Domestic action was quite adequate to protect the rights of citizens. In her country, for example, the rights of citizens under the Constitution were safeguarded in practice and complaints could be submitted to competent authorities beginning with the local and ending with the highest authorities in the land. Her delegation's position in the matter was upheld by the conclusions of a report prepared by the Secretary-General (A/2929, chap. VII, para. 66), which stated that the international community was not sufficiently developed for the right of petition to be granted immediately; that great harm might be done by the receipt of a mass of irresponsible and mischievous petitions; that the entire machinery of implementation might thereby be paralysed; and that inclusion of a provision establishing that right might limit ratifications to the extent that the Covenant would not enter into force.

35. The United Nations Charter provided for the acceptance of petitions only within the framework of the trusteeship system. Article 78 of the Charter provided, however, that the trusteeship system "shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality". The Charter made no provision, therefore, for petitions from citizens of independent States. Indeed, such petitions under the Covenant would contravene the principle of non-intervention in matters within domestic jurisdiction and incapacity, to require that such matters be submitted to settlement under the Charter (Article 2, paragraph 7). That principle was inalterable and any clause which purported to modify it would be inoperative under Article 103 of the Charter, which gave the Charter precedence over any other international agreement.

36. The right of individual petition was wrong in principle because it would subvert the rule of contemporary law that the only subjects of international law were States. Putting individuals on an equal footing with States would entail the creation of some supra-national authority to adjudicate between individuals and States, and that could only do damage to international relations, especially where the newer States were concerned. Their sovereignty needed to be strengthened, not challenged by some external force. Individual petitions would be a source of constant and unlimited intervention in their domestic affairs. The bodies receiving them would inevitably set themselves up as the prosecutors and judges of States.

37. She agreed with the very cogent arguments put forward by the Iraqi representative and would add that, if the human rights committee was composed of eighteen "persons of high moral character and recognized competence in the field of human rights" (article 27 of the draft Covenant), then many times that

number of equally well qualified persons could be found within States, and they were certainly no less interested in the rights of the citizens than would be the members of that committee. She did not see how States could give to those eighteen persons a higher place than their own nationals competent in human rights matters.

38. She had asked a number of representatives whether their countries would be able to make the declaration provided for in the proposed article 41 bis and they had said not at the present time but possibly in the future. Several speakers in the debate had likewise suggested that the article was intended for future generations and that it might not come into effect for some time. If that was so, it was senseless to include the article in the Covenant. A piece of legislation should include only what was real and practicable. She noted in that connexion that no article on individual petition had been included in the draft Covenant submitted in document A/6342.

39. It had been suggested that the world was moving towards greater integration and that the divisions between States would disappear. But that was pure Utopian speculation. The world was in fact divided between two diametrically opposed systems—socialism and capitalism—and there could be no question of their integration. Peaceful coexistence could prevail, but only between distinct States. The need for State sovereignty was felt, if anything, more strongly today than before.

40. For all those reasons her delegation would vote against the proposed article (A/C.3/L.1402/Rev.2).

41. Mrs. MALECELA (United Republic of Tanzania) said that her country had fought colonialism on grounds of human dignity. The principle of petitions was a noble one especially when applied to the disenfranchised people in colonial countries, including South Africa with its system of imposed rule. But since the United Nations was not a world government, it could not enforce a provision such as that proposed in article 41 bis which would apply in practice only to countries of goodwill having a government of the people's choosing. Those countries, having accepted the individual petition procedure, would expose themselves to interference by other, unscrupulous States.

42. An elected Government of a State had more reason to have the interests of its people at heart than any international body, especially in the present-day world filled with imperialism, greed and rivalry. Therefore, although the proposal was well-intentioned, she thought that the text before the Committee should not be inserted into the draft Covenant. Hastily prepared additions might well damage the good work done so far. If the article was pressed, her delegation would propose that it should be embodied in a separate protocol.

43. Mr. Ronald MACDONALD (Canada) said that his delegation was sponsoring the proposed new article (A/C.3/L.1402/Rev.2) because it believed that the world community had accumulated enough experience to demonstrate that petitions were a practical and workable proposition; that the petitions system was a necessary complement to other, older implementation measures incorporated in the draft Covenant; that the concept of individual petitions was an important part of the notion of human rights as opposed to States' rights; and that the article as drafted presented no danger to the sovereignty of any Member State.

44. The idea of granting to an aggrieved person the right to appeal to an international body for redress of his grievances was not new. It had been known to the League of Nations under the minorities treaties and the Mandates System; in the United Nations the idea had been advanced on several occasions in connexion with human rights. In recent years the world community had accumulated considerable experience and in some areas had developed very advanced procedures. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, for example, had established a petitions system which was far more elaborate than anything contemplated for the draft Covenant. The petitions procedure under the European Convention for the Protection of Human Rights and Fundamental Freedoms also went much further. Moreover, the Third Committee itself had the previous year recognized the principle of individual petition in the International Convention on the Elimination of All Forms of Racial Discrimination. Those precedents not only dissipated past grounds for suspicion but indicated that the older techniques needed to be supplemented by a system that would focus directly on the rights of the individual.

45. The principle of individual petition embodied the idea of international concern with the fate of the individual and strove to give that idea practical expression. It implied that eventually every individual would be entitled to appeal to and receive protection from some authority other than his own State, i.e., that he would be able to look to the wider community for protection. That concept had become an accepted part of twentieth-century thinking and it was anchored in the principles of the Charter and the Universal Declaration of Human Rights.

46. The right of individual petition must find a prominent place in the draft Covenant. There was something profoundly inconsistent in an arrangement which purported to protect the rights of man and at the same time denied him the right of action to defend his own interests. It was essential to continue moving the concept of human rights from the purely moral and ethical level to the world of law, politics and reality. The interests of the Third Committee lay in securing the concept of individual petition as part of the draft Covenant and not as a separate protocol.

47. Adequate safeguards had been written into the new article proposed. Not only was the entire procedure completely optional, but parties to the Covenant were free to make reservations, even regarding the implementation provisions. There were many other safeguards: the declaration of acceptance could readily be withdrawn; local remedies had to be exhausted; other relevant procedures of settlement must be respected; communications must be in writing; the human rights committee must exclude inappropriate communications; its meetings must be closed; and so on. Hence there was no reason to fear unwanted

intrusions on State sovereignty. The system was based entirely on consent. The proposal was sound, realistic and well thought out, and the proposed article fitted well into the implementation provisions of the draft Covenant. The proposed article 41 bis offered the Third Committee an opportunity to take an important step forward.

48. Mr. JATIVA (Ecuador) said that the proposal before the Committee was no novelty to the United Nations. The most recent precedent for it was to be found in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination; another was in Economic and Social Council resolution 728 F (XXVIII) relating to communications concerning human rights. The proposed article 41 bis was appropriate in terms both of principle and practice. It was based on the premise that an individual whose rights under the Covenant had been violated should be able to obtain redress otherwise than on the sole basis of the goodwill of the State to whose jurisdiction he was subject. It was, indeed, meaningless to speak of the rights of the human person if the human person lacked the means of ensuring them. True, the guarantee of the rights was the responsibility of the State, through institutions established under its domestic law. But it could and did often happen that the State failed to fulfil its responsibility, and then the international community must promote the observance of the rights proceeding on the basis of Article 56 of the United Nations Charter. In practical terms, it was clear that reporting and conciliation might prove inadequate, particularly since the relevant provisions had been weakened, as a concession to the principles of State sovereignty and non-intervention, to the point where they were practically without meaning. One of the advantages of the principle of individual petition was that it would serve as a check on the use of State-to-State communications and the conciliation procedures for purely political purposes. In his view the proposed new article submitted struck a good balance between the State sovereignty principle and the principle of international protection of human rights. It respected the former by leaving it open to States to recognize the committee's competence in the matter or not and by providing the safeguards listed in paragraphs 4 and 6.

49. His delegation fully supported the proposed article 41 bis (A/C.3/L.1402/Rev.2) and considered that that article should be inserted in the draft Covenant and not placed in a separate protocol, for that would considerably diminish its effectiveness.

The meeting rose at 1.20 p.m.

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