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*Chairman: Mr. Humberto DIAZ CASANUEVA
(Chile).*

AGENDA ITEM 48

Draft International Covenants on Human Rights (A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/5411 and Add.1-2, A/5462, A/5503, chap. X, sect. VI; E/2573, annexes I-III; E/3743, paras. 157-179; A/C.3/L.1062, A/C.3/L.1177/Rev.1) (*continued*)

PROPOSAL TO INCLUDE AN ARTICLE ON THE RIGHT TO FREEDOM FROM HUNGER IN THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (*concluded*)

1. The CHAIRMAN announced that, as a result of consultations between the sponsors and other interested delegations, the joint proposal for the addition of a second paragraph to combined articles 11 and 12 of the draft Covenant on Economic, Social and Cultural Rights had been redrafted in a form (A/C.3/L.1177/Rev.1) which, he hoped, would be generally acceptable. He now put the proposal to the vote.

2. Mrs. MANTZOULINOS (Greece) withdrew the amendment, proposed orally at the 1268th meeting, for the insertion of the words "if necessary" after the words "nutrition and" in sub-paragraph (a). She did so in the light of the explanation given by the Chilean representative earlier and because the revised text spoke of "the measures . . . which are needed".

At the request of the Chilean representative, a vote was taken by roll-call.

The United Arab Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Venezuela, Yugoslavia, Afghanistan, Albania, Algeria, Argentina, Australia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Canada, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, El Salvador, Ethiopia, Finland, France, Ghana, Greece, Guatemala, Guinea, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica,

Japan, Jordan, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Senegal, Sierra Leone, Spain, Sudan, Sweden, Syria, Tanganyika, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Against: None

Abstaining: Pakistan

The proposal (A/C.3/L.1177/Rev.1) was adopted by 88 votes to none, with 1 abstention.

3. Mr. HERRERA (Costa Rica) explained that he had voted in favour of the joint proposal, because it provided for constructive measures in the fight against poverty and hunger. He was grateful to the sponsors for having offered a text which, although not perfect, would be helpful in drawing attention to a most serious problem. It was shameful that two-thirds of the world's population went hungry. The solution obviously lay in programmes of land reform, improved agricultural techniques and a fair distribution of wealth. Another point to which his delegation attached great importance was the renunciation of paternalism, an attitude which had also been condemned by Pope John XXIII in his encyclicals *Mater et magistra* and *Pacem in terris*. It was essential that people should not only be given enough to eat but that they should be enabled to provide for their own needs. The problem of hunger was closely linked to the question of human dignity, and no solution neglecting that aspect could be regarded as acceptable.

4. Mr. YAPOU (Israel) reiterated the suggestion he had made (1268th meeting) for associating the Third Committee with the proposal adopted in the Second Committee for a world campaign against hunger, disease and ignorance (A/C.2/L.747). The Chairman should be authorized to convey the Third Committee's support for that proposal to the General Assembly.

5. Mr. BEAUFORT (Netherlands) recalled that he had already explained his reservations (1266th meeting) regarding the joint proposal. His misgivings, which had related solely to technical points, had not been entirely dispelled by the revised text, but he appreciated the efforts of the sponsors to meet the difficulty experienced by his and other delegations. Since he wholeheartedly supported the basic purpose of the proposal, he had decided to vote in its favour.

6. Mr. MONOD (France) said that his main sentiment following the adoption of the proposal was one of satisfaction that the Committee had unanimously expressed its views on such an important principle. His delegation's vote had been intended to support that principle.

7. Like some of his colleagues, he would have preferred the retention of articles 11 and 12 of the draft Covenant on Economic, Social and Cultural Rights, perhaps with some improvements, and he regretted that it had been found necessary to supplement that text by the introduction of somewhat vague general considerations offering advice on a matter with which the international community was about to deal. The new paragraph would be capable of different interpretations.

8. He had also been unhappy at the haste with which the Committee had drafted a text intended for inclusion in an international treaty. He hoped that the procedure, although perhaps justified in the case of the present proposal, would not be used as a precedent and made the starting point of a new working method. It was essential that Government experts should be given time to study important texts.

9. Mr. ATAULLAH (Pakistan) recalled that he had explained (1264th meeting) why he would have to abstain in the vote on the joint proposal. His delegation attached the greatest importance to the basic right of freedom from hunger. Pakistan was actively concerned with the improvement of food production and distribution methods and fully supported the policies advocated in the text adopted. His delegation was not, however, convinced of the need or appropriateness of inserting the text in the draft Covenant, which should merely contain a clear statement of the principle of freedom from hunger. Implementation should be left to Governments. Also, problems of food production came within the purview of the Second Committee and other United Nations bodies.

10. Mr. HERNDL (Austria) said that, owing to unforeseen circumstances, he had been unable to take part in the vote. If he had been present, he would have supported the proposal wholeheartedly.

MEASURES OF IMPLEMENTATION (continued)

11. Mr. SHERVANI (India) said that, if the rights embodied in the draft Covenants were enjoyed by every person everywhere, the world would be a far happier and more peaceful place. It was therefore a prime duty of the Committee to ensure that the substantive articles it had adopted were fully implemented by the States Parties to the Covenants.

12. In view of the different legal, social and administrative systems existing in the different countries, a particular procedure or method for the implementation of a right which might be quite appropriate for one country might not suit another. To secure international agreement on the implementation clauses of the draft Covenants was therefore an extremely difficult and complicated matter. His delegation considered that internationally acceptable clauses should be sought so that, as far as possible, a common code and common practices for the implementation of human rights could be evolved. The Committee had a fairly good draft before it, and he wished to make some suggestions with respect to it. On learning the views of other members, he would be happy to propose formal amendments at the appropriate stage.

13. In the case of the draft Covenant on Economic, Social and Cultural Rights, the implementation measures envisaged were limited to the submission of reports to the United Nations on progress made in securing observance of the rights recognized in the Covenant. That appeared to be rather inadequate for the purpose pursued. At least the same measures as

provided in the other draft Covenant were necessary, but the present clauses seemed to be the maximum on which the Commission on Human Rights had been able to agree, and his delegation would not therefore propose any amendments to them.

14. In part V of the draft Covenant on Economic, Social and Cultural Rights, article 27, known as the federal clause, raised a purely academic matter for his delegation. All the rights laid down in the draft Covenant were already guaranteed by the Indian Constitution and were enforced uniformly throughout the country by the federal and state authorities. There might be other federal States where the absence of such a clause could leave some of the citizens without full protection, and therefore, if some such provision was not included, those States might not be able to ratify the Covenants.

15. Article 28—the so-called colonial clause—was not consistent with the Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)) and he favoured its deletion; he hoped that very soon there would remain no colonies or dependent territories anywhere in the world.

16. In article 29, paragraphs 2 and 3, he believed that the word "accepted" should be replaced by the word "ratified". The argument that such a change would put States Parties in the position of accepting unknown procedures in advance was not justified. A ratification procedure was prescribed for amendments to the United Nations Charter. Those amendments would come into force with respect to all Member States, even if some of them had voted negatively. If majority rule could apply in regard to the Charter, there should be no hesitation in applying it to the draft Covenants.

17. Before turning to the draft Covenant on Civil and Political Rights, he wished to remind members that an article on the right of property had been debated by the Commission on Human Rights at several of its sessions. Almost all the Commission's members had wanted to include such an article in the draft Covenant on Economic, Social and Cultural Rights, but they had been unable to agree on a text. In another effort to bring about agreement on the right of property, his delegation would suggest for the Committee's consideration an article worded as follows:

"The States Parties to this Covenant recognize the right of everyone:

"(a) To own property alone as well as in association with others, subject nevertheless to the laws relating to the acquisition and ownership of property in force in the States where the property is situated, and

"(b) To enjoy the benefits of such ownership without deprivation, except by due process of law."

He hoped that there was still time to include an article on the right of property among the substantive articles of the draft Covenant on Economic, Social and Cultural Rights; that might be done at the nineteenth session, before the Committee come to vote on the implementation clauses.

18. In the draft Covenant on Civil and Political Rights, he believed that the intention of article 37, paragraph 2, would be clarified by the following wording:

"2. After its initial meeting, the Committee shall meet:

"(a) Whenever any matter is referred to it under article 40;

"(b) At such other time when convened by its Chairman or upon request made by not less than five of its members."

19. He suggested that the second sentence of article 41, which was rather vague, should be replaced by the following phrase, to be added at the end of the first sentence: "unless the Committee decides that the available domestic remedies are either inadequate or are available only after an unreasonably long time." There appeared to be a printing error in article 45 (E/2573, annex I B); the word "or" in the second line should no doubt be "of".

20. Article 47 was so worded that a Party to the Covenant could go directly to the International Court of Justice, without first complying with article 40 of the Covenant. Parties might abuse that privilege and initiate proceedings in the Court against another Party, in order to avoid investigation and negotiation through the proposed Human Rights Committee. That Committee should consider questions of human rights violations in the first instance, and only where it failed to settle the matter should the case be referred, for legal interpretation, to the Court. The article as drafted was likely to lead States Parties to enter further reservations to their declarations made under Article 36 of the Statute of the International Court of Justice. He believed that the Court's jurisdiction should be restricted to disputes in which the Human Rights Committee had first drawn up its report, in accordance with article 46 of the draft Covenant, and he suggested the following wording to replace article 47:

"The States Parties to this Covenant agree that no dispute arising out of the interpretation or application of this Covenant shall be submitted to the International Court of Justice, except in accordance with article 46 of this Covenant."

21. In article 54, paragraphs 2 and 3, he would again suggest replacing "accepted" by "ratified". The word "ratified" was used in the same context in Article 108 of the Charter.

22. Mr. NEJJARI (Morocco) said that for a long time only States had been the subjects of international law, individuals having been considered to come exclusively within national jurisdiction. But with man's growing awareness of his rights, with the appearance of international treaties protecting minorities and other groups, and with the advent of the Universal Declaration of Human Rights, international law had come to concern itself increasingly with the rights of the individual.

23. Bearing that development in mind, it was best to call for the progressive implementation of the provisions of the two draft Covenants, and particularly of the Covenant on Economic, Social and Cultural Rights; in that Covenant a great deal of skill and flexibility would be needed in drafting the measures of implementation.

24. The implementation clauses were as important as the substantive articles of the draft Covenants, which would have value only in so far as they were effectively implemented. It would be a mistake to underestimate

the difficulties involved, however. Countries not only had different institutions and legal systems, they had also attained different degrees of development. Standards were hard to lay down in social, cultural and even economic matters. He was glad to see, therefore, that some flexibility was shown in the provisions for a periodic reporting procedure and a Human Rights Committee.

25. His own country was a constitutional and democratic monarchy where the fundamental freedoms of association, expression and membership in political and trade-union organizations, and the rights to education and employment, existed in law and in fact. No restrictions could be placed on those rights and freedoms outside the framework of the law. All Moroccans were equal before the law, with no distinction as to race, creed or sex, and there were a number of official institutions guaranteeing respect for human rights. He hoped that in the very near future all States would be in a position to give effect to the provisions of the Covenants, whose noble objective was man's advancement and well-being.

26. Mr. BEAUFORT (Netherlands) regretted that the insertion of new articles dealing with additional rights had delayed consideration of the provisions on implementation, without which the Covenants would be of little value. He had been greatly concerned to note that some countries appeared to be strongly opposed to what he would call international implementation, regarding it as being at variance with their concept of sovereignty. As on many previous occasions the obsolete concept of absolute sovereignty was emerging as a serious obstacle to further progress in the codification of international law. States relying solely on a national system of implementation denied their peoples the additional safeguards provided by an international guarantee. Without such a guarantee, the Covenants would lose much of their effectiveness. His own country's laws provided very full protection for human rights; yet the Netherlands, like other members of the Council of Europe, had ratified the Convention on Human Rights and Fundamental Freedoms, which provided for an elaborate system of implementation on a supra-national basis. That Convention had already proved to be an instrument of great moral and practical value.

27. His delegation favoured the establishment of two different procedures for the implementation of the two Covenants. A reporting system would be suitable in the case of economic, social and cultural rights, which could only be implemented progressively, while a Human Rights Committee should deal with civil and political rights, which were capable of immediate application. A similar distinction was made in the European instruments dealing with human rights. The inter-American draft convention on human rights, too, provided for different procedures to give effect to the two different groups of rights.

28. The Commission on Human Rights had submitted a carefully worded and well balanced text on measures of implementation (E/2573, annex I), and work on the draft Covenants would be considerably expedited if the general line so ably traced by the Commission were to be accepted. During the consideration of article 2 of the draft Covenant on Civil and Political Rights, the USSR delegation had appealed (1257th meeting) to the Committee to accept the wording as it

stood, since a great many variants had already been considered and amendments would merely weaken the text. He felt compelled to make a similar appeal to the Committee with regard to the articles dealing with

implementation procedures and he hoped that the USSR delegation would support his appeal.

The meeting rose at 4.30 p.m.