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CONTENTS

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.1180) (continued)

MEASURES OF IMPLEMENTATION (continued)

1. Mr. YAPOU (Israel) said his delegation was prepared to go ahead with the examination of the implementation provisions of the draft International Covenants on Human Rights (E/2573, annex I) during the current session. However, in order to give the new Member States more time to study the difficult problems involved, the Committee should postpone voting on them until the nineteenth session. He hoped, however, that agreement could in the meantime be reached on certain points. First, the question whether there should be one or two Covenants had been decided and should not be reopened. Second, consideration of the articles on implementation might be expedited if a working party or a diplomatic conference were to study the subject before the nineteenth session.

2. The idea of international protection of human rights was not new and the practice of humanitarian intervention or intercession in their defence had a long history. Even before the United Nations had come into being, international treaties had protected the rights of certain national and religious minorities, particularly during the time of the League of Nations. The Charter of the United Nations and the Universal Declaration of Human Rights laid down principles for progressive measures, both national and international, to secure universal and effective recognition and observance of its provisions. During the current discussion of issues connected with the implementation of the draft Covenants on Human Rights, it was interesting to recall that, in a letter to The Times of London published on 25 October 1939, H. G. Wells had proposed a declaration of rights, consisting of ten articles, intended for incorporation in the allied war aims. The tenth article stipulated that the provisions of the declaration should be more fully defined in a legal code but should not be qualified or departed from on any pretext whatever.

3. The United Nations Charter represented a decisive advance in the international protection of human rights. The obligations of Governments would be very fully defined in the final text of the Covenants; but the fact that such obligations already existed under the Charter had been demonstrated by international jurists. Lauterpacht had observed that "it would be out of keeping with the spirit of the Charter and, probably, with accepted canons of interpretation of treaties", to attach decisive importance to the fact that the Charter contained no express provision by which the Members of the United Nations agreed to respect human rights and fundamental freedoms. The incorporation of such a provision would have been futile, since the principle of respect for, and observance of, human rights and fundamental freedoms was "one of the main pillars of the structure of the Organization created by the Charter". In that matter, Lauterpacht continues, care should be taken "not to permit the task of interpretation to degenerate into an attempt at deriving the maximum advantage from the economy of expression of a basic international instrument. Nor was it without significance that in some judicial pronouncements, including those of Justices of the United States Supreme Court, the relevant provisions of the Charter had been treated as a source of self-executory legal obligations affecting private rights". Lauterpacht also cited the case of Oyama versus California (1948), in which four Justices of the United States Supreme Court, in concurring opinions, had expressed the view that the provisions of the Charter were a source of legal obligations. Contrary to opinions held by the Supreme Court of California and the Supreme Court of the United States, they hold that certain state laws were incompatible with the obligations of the United States under the United Nations Charter.[1/]

4. Those conflicting opinions would still be debated for a long time to come, yet in his view, Article 55 (c) of the Charter, read in conjunction with Articles 56 and 103, constituted a definite undertaking on the part of the Member States to protect human rights. Two other jurists, Goodrich and Hambro, had pointed out [2/] that the phraseology used in Article 56 was a compromise and, like most compromises, capable of more than one interpretation. The words "in co-operation with the Organization" presumably referred to the United Nations as a separate entity functioning through its appropriate organs and not to the individual Members. If that interpretation was correct, Members clearly pledged themselves to co-operate not only with each other but with the appropriate organs of the United Nations with a view to achieving observance of human rights. His delegation accepted that

1/ See H. Lauterpacht, International Law and Human Rights (London, 1950), pages 150 and 151.

2/ See Leland M. Goodrich and Edvard Hambro, Charter of the United Nations (World Peace Foundation, Boston, 1949), pages 323 and 324.

interpretation. According to Lauterpacht, too, the Charter imposed legal obligations in the matter of human rights not only upon the Members of the United Nations, but upon the Organization as a whole. "The degree of legal obligation is particularly high with regard to a subject matter which, as in the case of human rights and freedoms, is a constant and fundamental theme of the Charter ... a clear duty of collective action...exists, irrespective of any explicit pronouncement of the Charter to that effect."[3/]

5. The Covenants, when finally adopted, should become the living machinery for putting that conception into effect. His delegation was convinced that the reporting system, whose basic purpose was outlined in the Secretary-General's explanatory paper (A/5411, paras. 12 and 13), was the most suitable method for ensuring the implementation of economic, social and cultural rights. It was quite true that the international community had evolved since the relevant articles had been drafted and that some adjustments might be required; but that should not prevent the Committee from completing its work on the text with all possible speed. Moreover, as in the case of other international instruments, some revisions might be adopted after ratification in the light of the experience acquired in the functioning of the Covenants.

6. Mr. HERNDL (Austria) observed that the Austrian Government, in its comments on the measures of implementation to be incorporated in the draft Covenants (A/5411/Add.1), had expressed the view that the implementation clauses of the two instruments should be different and that the provisions drafted by the Commission on Human Rights should in principle be accepted.

7. Genuine international protection of human rights presupposed two conditions: (a) that the rights were defined in rules accepted by States; and (b) that there existed an international enforcement machinery. The first condition had already been met, for the parts of the draft Covenants setting forth the rights themselves had now been completed. The second condition was the difficult matter now facing the Committee.

8. The aim of human rights protection was to defend any individual against any State and also to defend the entire population of a State against that State. The defence of the individual against an alien State was an important feature of international protection, but an even bolder feature was that of defence involving intercession between the State and its nationals. Complete and effective international protection of human rights left no room for State sovereignty in the traditional sense. Some would call that view academic and divorced from world realities, but it set the ideal and he for one was convinced that sooner or later it would prevail over the narrower view.

9. Although the full protection of human rights had not by any means been achieved, it was an error to think that no advances had been made and that the implementation procedures set out in the draft Covenants would entail too radical an enroachment on State sovereignty. The reasons which had led the Commission on Human Rights to advocate those procedures seemed to him well founded. It should be clearly understood that the proposed Human Rights Committee was not a judicial but rather a conciliation and mediation body—a political organ which would consider more than the strict terms of the Covenants. It would not have the power to make binding decisions in specific disputes but, because of its nature, it might contribute to the peaceful settlement of differences and obviate the danger of intercession by powerful States. Its establishment would be in keeping with the letter and spirit of the Charter.

10. Some delegations belived that article 46 of the draft Covenant on Civil and Political Rights established the compulsory jurisdiction of the International Court of Justice, and in fact that had been the intention of the Commission on Human Rights. But the actual wording of the article was not such as to oblige States to come before the Court if proceedings were initiated unilaterally. Even if it was so interpreted, the eventual jurisdiction of the Court would not run counter to the Charter, the principle of State sovereignty and public international law in general. The Court could consider a dispute only with the consent of the parties concerned. States could, however, restrict such consent to a single existing dispute or could state in advance that it applied generally to a whole class of disputes. Thus, article 46 was tantamount to an optional clause.

11. His delegation believed that more frequent use should be made of the International Court of Justice, in accordance with General Assembly resolution 171 (II). There had recently been a tendency to conclude an optional protocol concerning the compulsory settlement of disputes, in place of the arbitration clause normally included in multilateral treaties. In his view, that practice did not signify a decline in recourse to international tribunals. Thus, thirty-three of the forty-one States signatories of the Vienna Convention on Consular Relations, 1963, had also signed the optional protocol concerning the compulsory settlement of disputes annexed thereto.

12. While the procedure recommended in the draft Covenant on Civil and Political Rights was controversial, the system set forth in the other draft Covenant was far less so. No one had spoken against the reporting procedure, and he hoped that the Committee could begin to discuss the specific clauses of that draft Covenant, even if it did not vote on them at the present session. His delegation understood the concern of many countries which had not had sufficient time to study the draft articles. If the detailed discussion and vote on the measures of implementation were deferred until the nineteenth session, it would be well to request those countries which had not yet submitted their comments on the Secretary-General's explanatory paper to do so, in conformity with General Assembly resolution 1843 B (XVII).

13. His delegation placed great hope in the two draft Covenants on Human Rights, but they would be of questionable value unless they contained adequate measures of implementation.

14. The CHAIRMAN regretted that so little progress had been made towards acceptance of the provisions for the implementation of the two draft Covenants. Clearly, some of the clauses proposed by the Commission on Human Rights would have to be brought up to date, but it would be unfortunate if the basic structure were to be discarded. The division into two Covenants, which had been adopted as a compromise, should be accepted as a basis for further work. There appeared to be general agreement on the principle of

3/ See H. Lauterpacht, International Law and Human Rights (London, 1950), page 159.

a reporting system for the draft Covenant on Economic, Social and Cultural Rights, but few specific proposals had been made. He did not see clearly how the national committees suggested by the Saudi Arabian representative (1275th meeting) could function in a country whose institutions did not favour their operation. Moreover, national committees would provide only national, not international, protection of human rights.

15. In its further work on the draft Covenants, a number of courses were open to the Third Committee. It might submit a record of its deliberations to Governments, in order to obtain the opinions of jurists in Member States. However, if past experience was a guide, more than half of the Member States would not reply. In his view, therefore, the question could not be settled on that basis. The Committee might usefully begin the detailed discussion of part IV of the draft Covenant on Economic, Social and Cultural Rights forthwith. As regards the implementation provisions of the other draft Covenant, it was conceivable that a compromise reconciling the widely divergent views on the matter could more easily be worked out in the Commission on Human Rights than in the Third Committee.

16. Mr. BOURCHIER (Australia) endorsed the Chairman's remarks. It was very important that the Committee should maintain a rapid rhythm of work on the draft Covenants and allow neither the Commission on Human Rights nor itself to reopen the whole question of their structure. He believed that the Committee should proceed to discuss the implementation clauses as they stood. Newer members could voice any misgivings they had or seek any clarifications, and the Committee could decide in the light of the discussion whether further debate, or the voting, should be reserved until the nineteenth session. His delegation would not press for voting at the present session, although it was itself prepared to vote.

17. Mr. BAROODY (Saudi Arabia) agreed with the Chairman regarding the need to expedite the work on the draft Covenants but pointed out that the Committee had not previously had an opportunity to hold a general debate on the question of implementation. In his own statements he had attempted to give some of the background of the various issues for the benefit of newer members. It was for that reason that he had referred to the old question of one versus two Covenants. His intention had not been to reopen that question but to make members aware of the fact that it was and always had been a matter of serious concern to preserve the unity of the rights enunciated. Although there were now two separate instruments, their provisions must be regarded as being closely interconnected and interdependent.

18. In making his suggestion for the establishment of national committees, he had wished to present an alternative to the prevailing legal and technical point of view. It was well known that experiments which were brilliantly successful in the laboratory did not necessarily work well in practice, and he believed that the procedure proposed in the draft Covenant on Civil and Political Rights might well fall in that category. The fact was that the world was far from perfect, and so the formulae devised to improve it must not set unrealistic aims. All countries would have problems to overcome in ensuring the full enjoyment of human rights. It was important that they should have ample opportunity to remedy violations of human rights of their own accord before being exposed to international sanctions. His suggestion was that non-governmental national committees, composed of capable persons enjoying immunity from the State, should consider and record alleged violations of human rights and, in those few cases where the Government failed to redress the wrong, the matter would be referred to a United Nations committee on human rights for conciliation and arbitration. Unless the intermediary of national committees was provided, States would tend to invoke their national sovereignty whenever serious complaints against them were raised, and their opposition to such complaints would no doubt be respected for reasons of political expediency. The system he suggested would in the end be more effective, less costly to the United Nations and more acceptable to States. The Committee might wish to refer his suggestion to the Commission on Human Rights for further elaboration, or some delegation might wish to submit it formally to the Committee at the nineteenth session.

19. Mr. CAPOTORTI (Italy) recalled his statement (1273rd meeting), in which he had raised some of the questions referred to by the Chairman and had suggested that, since agreement existed in principle on the reporting system provided for in the draft Covenant on Economic, Social and Cultural Rights, the Committee might proceed to consider the relevant articles in detail, without in any way prejudging its decision on the controversial implementation clauses of the other draft Covenant. He still believed that that procedure should be followed, so that delegations might address themselves to the specific problems that arose in connexion with each article; but as some delegations, for perfectly valid reasons, had expressed the desire to have more time before taking a final stand, he would not press for a vote at the current session, even on those articles on which there was a substantial measure of agreement.

20. In his view, the question whether a single Covenant or two should have been drafted was closed, especially since the Committee had approved article 2 of each instrument in a form which reflected two different approaches to the question of implementation. It was still possible, of course, to bring the two implementation systems nearer to one another, but even those who favoured that course would surely benefit from a closer scrutiny of the model constituted by the articles contained in part IV of the draft Covenant on Economic, Social and Cultural Rights. Moreover, it had been suggested that the records of the present debate should be forwarded to Governments to assist them in formulating their views on the question of implementation—his delegation was co-sponsoring a draft resolution[4/] to that effect—and the records would undoubtedly be of greater value if they referred to specific problems as well as general considerations.

21. It was true that the Committee had reached a delicate stage in its work on the draft Covenants, but it should avoid giving the impression that it found itself in a quandary as soon as it turned from statements of principle to questions of legal obligations and supervisory measures; by its actions it should reaffirm that what it sought was a binding agreement, and not a mere declaration.

22. Mr. DAYRELL DE LIMA (Brazil) said that his Government entirely agreed with the general principles

4/ Subsequently circulated as document A/C.3/L.1182.

of the reporting and complaints systems formulated by the Commission on Human Rights; his delegation was prepared to vote for part IV of the draft Covenant on Economic, Social and Cultural Rights as it stood. A discussion of the substance of the articles concerned would be useful even to those delegations which had requested further time for reflection, and the Committee might proceed to such a discussion with a view to reaching agreement on at least the general system of implementation to be adopted; in the light of the progress achieved, it could then decide either to vote on the articles or to defer further action until the nineteenth session.

23. Mr. MELOVSKI (Yugoslavia) stated that his delegation had no objection to a detailed consideration of articles 17 to 25 of the draft Covenant on Economic, Social and Cultural Rights, on the clear understanding that the whole question might be reopened and new proposals submitted at the nineteenth session.

24. Mrs. RAMAHOLIMIHASO (Madagascar) recalled that she had opposed (1273rd meeting) the idea of considering the implementation clauses article by article, because she had feared that the Committee might be called upon to vote at the current session. She welcomed the constructive suggestion now made by the representative of Italy, which her delegation could support.

25. The CHAIRMAN suggested that, in view of the General Assembly's decision, in resolution 1843 C (XVII), to give priority at the eighteenth session to the consideration of the draft Covenants, and in accordance with the Italian representative's suggestion, the Committee should, at the 1277th meeting, commence a detailed consideration of articles 17 to 25 of the draft Covenant on Economic, Social and Cultural Rights, but without voting on the text of any of those articles at the current session; it would also act upon the draft resolution mentioned by the Italian representative when it had been formally introduced.

It was so decided.

The meeting rose at 12.55 p.m.

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