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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.1355, A/C.3/L.1356/REV.1, A/C.3/L.1366/ADD.3, A/C.3/L.1373 AND ADD.1 AND ADD.1/CORR.1, A/C.3/L.1379/REV.1 AND REV.1/CORR.1, A/C.3/L.1381, A/C.3/L.1387, A/C.3/L.1389-1391, A/C.3/L.1394-1399, A/C.3/L.1402, A/C.3/L.1404)

1. The CHAIRMAN invited the Committee to continue its consideration of article 39, paragraph 1, of the draft Covenant on Civil and Political Rights (A/6342, annex II.B, parts IV and V) and the amendments thereto (A/C.3/L.1373 and Add.1 and Add.1/Corr.1, A/C.3/L.1390). She recalled that the United States representative had withdrawn the second of her delegation's amendments (A/C.3/L.1390) because it was similar to the first of the amendments to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1, subject to the replacement of the words "for the period of" in article 39, paragraph 1, by "for a term of" in the English text only. She invited the Committee to vote on the first amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1, as revised to include the second amendment of the United States of America.

The first amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1 as orally amended, was adopted unanimously.

2. The CHAIRMAN invited the Committee to vote on the first and third of the United States amendments to article 39 (A/C.3/L.1390), which sought respectively in paragraph 1 to replace the words "Chairman and Vice-Chairman" by "officers" and to delete the third sentence.

The first amendment of the United States of America to article 39 was adopted by 71 votes to none, with 1 abstention.

The third amendment of the United States of America to article 39 was adopted by 73 votes to none, with 2 abstentions.

Article 39, paragraph 1, as amended, was adopted unanimously.

3. The CHAIRMAN invited the Committee to vote on the second and third amendments to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1, which sought respectively, to replace in sub-paragraph 2 (a), the word "seven" by "twelve" and to delete from sub-paragraph 2 (b), all the words after "members present".

The second amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1 was adopted unanimously.

The third amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1 was adopted by 81 votes to none, with 1 abstention.

4. The CHAIRMAN invited the Committee to vote on the fourth amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1, which called for the deletion of sub-paragraphs 2 (c) and (d) of the article.

5. Mr. PAOLINI (France), supported by Mr. BAHNEV (Bulgaria), said that it was his understanding that the sponsors of the amendments had agreed that if the human rights committee was to consider communications under article 40, it would do so in closed meetings. Since article 40 did not yet provide for consideration of communications, his delegation could not vote on the proposal to delete sub-paragraph 2 (d), of article 39. He proposed that the Committee should not vote on that sub-paragraph until it had voted on article 40.

6. Mr. A. A. MOHAMMED (Nigeria) informed the French representative that the sponsors of the amendments in document A/C.3/L.1379/Rev.1 and Rev.1/Corr.1 would propose the insertion in article 40 of a provision such as he had mentioned. He suggested that the Committee should vote on the fourth amendment to article 39 proposed in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1.

7. Mr. SAKSENA (India) said that, whatever the Committee's ultimate decision on the matter might be, the question of closed meetings should be discussed in connexion with article 40, which concerned the complaints procedure, rather than in connexion with article 39.

8. Mr. SANON (Upper Volta) said that the sponsors of the amendments in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1 wished the fourth amendment to article 39 to be voted on as a whole.

9. Mrs. HARRIS (United States of America) said that in her delegation's view the question of closed meetings should be dealt with by the human rights committee itself when it adopted its rules of procedure. A decision to delete sub-paragraph 2 (d) of article 39 would not foreclose a final decision on the question of closed meetings because the issue could be dealt with in connexion with articles 40 and 41. In her view, the Committee should not leave the decision on any parts of the article pending since that procedure had caused a great deal of difficulty in the past.

10. Mr. BAHNEV (Bulgaria) thought it useful to provide in article 39 for closed sessions, because of the comments which might be made on the reports submitted by States parties. He would therefore have to abstain on the proposal to delete sub-paragraph 2 (d). He proposed that the fourth amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1 should be put to the vote in two parts.

11. Mr. PAOLINI (France) and Mr. NASINOVSKY (Union of Soviet Socialist Republics) supported that proposal.

12. Mr. SANON (Upper Volta) said that he had no objection to the separate votes requested by the Bulgarian representative, but requested that the part of the amendment which called for the deletion of sub-paragraph 2 (d), should be voted upon first.

The second proposal in the fourth amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1 to delete sub-paragraph 2 (d) of the article was adopted by 50 votes to 2, with 37 abstentions.

The first proposal in the fourth amendment to article 39 in documents A/C.3/L.1373 and Add.1 and Add.1/Corr.1 to delete sub-paragraph 2 (c) of the article was adopted by 85 votes to none, with 4 abstentions.

Article 39, paragraph 2, as amended, was adopted by 87 votes to none, with 2 abstentions.

Article 39 as a whole, as amended, was adopted unanimously.

13. The CHAIRMAN invited the Committee to consider the first amendment in document A/C.3/L.1379/Rev.1, which called for the insertion in the draft Covenant of a new article 39 bis.

14. Mr. MIRZA (Pakistan), introducing the amendment on behalf of its sponsors, said that the word "general" should be inserted before the word "comments" in the second sentence of paragraph 3 and the word "concerned" in that sentence should be deleted. The word "its" in the third sentence of that paragraph should be replaced by "these" and the word "recommendation" in paragraph 4 should be replaced by "comments".

15. The reporting procedure provided for in the new article was one part of the system envisaged by the sponsors under which the human rights committee

would deal with reports from States parties as one part of its regular functions. Paragraphs 1 and 2 of the new text were based on paragraphs 1 and 3 of the draft of article 49 prepared by the Commission on Human Rights (A/6342, annex II.B, parts IV and V); paragraphs 3 and 4 were new and specified the functions of the committee in dealing with the reports. The sponsors had not included paragraphs 2, 4 and 5 of the Commission's draft because they considered paragraph 2 superfluous, since States parties were fully able to formulate and submit their own reports, and paragraphs 4 and 5, which were similar to the United Kingdom sub-amendment (A/C.3/L.1404), were covered by paragraph 3 of the new text (A/C.3/L.1379/Rev.1, first amendment). Once the human rights committee had transmitted the reports, with its comments, to the Economic and Social Council, it would be up to the Council to take whatever action might be necessary and to consult whatever subsidiary organs it might wish; there was therefore no need for a specific provision to that effect.

16. Paragraph 4 of article 49 did not make it clear which specialized agencies would be eligible to receive reports. Moreover, not all States parties to the Covenant would be members of all specialized agencies. A State party which was also a member of a particular specialized agency requiring such reports would forward its report in any case, and the specialized agency concerned would receive duplicate reports, one directly and one through the Economic and Social Council. Those considerations also applied to the United Kingdom sub-amendment (A/C.3/L.1404).

17. Paragraph 4 of the proposed article 39 bis was more comprehensive, simple and useful than paragraph 5 of article 49, which was now unnecessary in view of the deletion of paragraph 4 of that article.

18. Mrs. HARRIS (United States of America), introducing her delegation's sub-amendment in document A/C.3/L.1391 to the proposed article 39 bis, observed that its purpose was to remove any ambiguity connected with the word "measures". The amendment would specify that the reports of parties should relate to "legislative, judicial or other action". Because of the differences between countries, action in pursuance of the Covenant would be taken in a variety of sectors and through a variety of institutions—legislative, executive and judicial, public or private, etc. The terms of the Covenant should encourage reporting of all action taken to ensure the enjoyment of the rights set forth. In addition, because the Covenant was likely to provide no implementation procedure other than reporting for many of the parties, it should indicate very clearly the nature of the reports to be submitted, so as to ensure that they would be of maximum usefulness.

19. Lady GAITSKELL (United Kingdom), introducing her delegation's sub-amendment (A/C.3/L.1404) to the proposed article 39 bis, said that its purpose was to preserve the substance of article 49, paragraph 4, of the original draft (A/6342 annex II.B, parts IV and V). It seemed desirable to provide for the transmission of relevant parts of the reports of States parties to the appropriate specialized agencies. The Secretary-General would obviously not transmit a part of a report to a specialized agency of which the State party

concerned was not a member. The sub-amendment would avoid duplication and overlapping between the work of the human rights committee and that of the specialized agencies which were already concerned with some of the rights set out in the Covenant. It would be recalled that a comparable provision had been included in the other draft Covenant (article 17, para. 2 (b)); the provision was perhaps less important in the case of civil and political rights, but it was still desirable. As in the other draft Covenant, the responsibility for transmission was given to the Secretary-General.

20. Mr. Ronald MACDONALD (Canada) said that the issue of compulsory reporting required very careful consideration since reporting was the major control mechanism envisaged for the Covenant. Since the control techniques of conciliation and petitions were to be entirely optional, and might not be accepted by many States parties, the strength of the implementation provisions would depend on the strength of the reporting system.

21. The proposed article 39 bis indicated on the one hand what States parties could do, and on the other what the human rights committee could do. States parties undertook under paragraph 1 to report to the committee, and they retained the power under paragraph 4 to submit observation on any comments which the committee might make under paragraph 3. The committee for its part enjoyed at least four competences. It could consider and study the reports which the parties were obliged to submit to it; it could request the parties to provide additional reports, it could transmit its own reports and comments to the States parties concerned and it could send to the Economic and Social Council copies of the reports received together with comments on them. The proposed article provided few if any guidelines concerning the kind of reports which the parties were to furnish. The reports were simply to be on the measures which the parties had adopted. Thus the parties enjoyed a fairly free hand. He believed that the parties should be told what their reports should contain and should be encouraged to furnish information that was specific and meaningful, and not meaningless generalities. The object should be to secure information which was usable and manageable. Because his delegation felt that the text needed substantial strengthening in that regard, it would support the United States sub-amendment to article 39 bis in document A/C.3/L.1391.

22. The words used to enumerate the committee's powers of examination were rather vague. Instead of mere "consideration" and "study", the committee should be authorized to examine, analyse, appraise and evaluate the reports, and it should do so in a searching and critical fashion. Although the proposed article could be interpreted in that way, it would be useful to make that meaning clearer. In his view, the committee should also be explicitly empowered to request supplementary information from States parties.

23. He understood the second sentence of paragraph 3 of the proposed article to mean, not that the proposed committee simply acknowledged receipt of reports, but that it could transmit to the parties con-

cerned its expert appraisals, evaluations and suggestions; it should, if necessary, point out inadequacies in their legislation and practices. If that was understood, there was no need to amend the provision, but if there were doubts or ambiguities then the meaning should be clarified.

24. In accordance with the third sentence of paragraph 3, the committee could transmit copies of the reports to the Economic and Social Council. An important question was what the Council would do with the reports. Under the Charter, the Council had major responsibilities for promoting respect for human rights and fundamental freedoms. He wondered whether the Council would discuss and study the reports, and if so in what context and to what extent. He also wondered whether it would transmit the reports to the General Assembly so that all Members could benefit from the important experience the parties would be developing in the area covered by the Covenant. The reports of the human rights committee itself would be of great interest to all those working in the human rights field and should, he believed, be widely circulated. The text was silent on those matters.

25. His delegation favoured a reporting system that would achieve two main objectives—it should induce parties to produce meaningful information and it should facilitate the appropriate dissemination of that information and of any recommendations made. Publicity was not to be despised as a mode of enforcement, for most States did not like to have to face an unfavourable report on the position of human rights in their territories. Publicity was after all the principal means at present available to awaken the conscience of men and women and to bring pressure to bear on Governments. He urged a clarification of article 39 bis which would ensure such publicity.

26. Mr. NASINOVSKY (Union of Soviet Socialist Republics) congratulated the sponsors on their proposed article, which, as orally amended by the Pakistan representative was entirely acceptable to his delegation. The United States sub-amendment, on the other hand, narrowed the scope of the article unduly. It emphasized legislative and judicial measures and minimized the vitally important matter of practical compliance with the letter and spirit of the Covenant. The text as proposed better answered the purposes being pursued. With reference to the United Kingdom sub-amendment, he pointed out that his country, among others, was not a member of certain specialized agencies and had serious reasons, sometimes of a political nature, for not joining them. It maintained no correspondence with those agencies and did not wish to. It could not therefore agree to send part or all of its reports to those agencies or, even less, agree to have the Secretary-General do so. Moreover, the reports would reach the Economic and Social Council, and, since the specialized agencies received documents and communications from the Council and were represented at its meetings, there was ample opportunity for the appropriate transmission of material to them without any special provision in the Covenant.

27. Mr. ABDEL-RAHMAN (International Labour Organisation) said that the United Kingdom sub-

amendment was a sensible and practical one. It would prevent double reporting and assessment of reports, which could only lead to confusion and frustration. Adoption of the sub-amendment would ensure that no information from parties to the Covenant which were not members of a particular specialized agency or parties to its conventions was transmitted to that agency.

28. Mr. SALSAMENDI (United Nations Educational, Scientific and Cultural Organization) supported the remarks of the ILO representative. In the opinion of UNESCO, the paragraph 3 proposed by the United Kingdom would facilitate the work that would be required in connexion with the Covenant.

29. Mr. HANABLIA (Tunisia) considered that the report of States parties should be transmitted by the Secretary-General, not to the human rights committee but to the Economic and Social Council. Under the article now proposed, not only would the committee receive the reports but it might or might not transmit them to the Council. The human rights committee, however, was to be an autonomous body composed of eighteen persons acting in their individual capacity. As a matter of principle, his delegation found it improper that States should be asked to report to such a body. Moreover, from a practical standpoint, it was known that outside individuals might have views that differed from the country's own. In Tunisia the experience of a few years of independence had shown that the opinions of outside experts were not always acceptable to Tunisians because the experts were not very familiar with the country's specific conditions. In his view the human rights committee, as it was to be constituted, should not perform any control function which placed it above Tunisia's national institutions and its Economic and Social Council. Tunisia was prepared to send its reports to the United Nations Economic and Social Council. If the latter wished or found it necessary, it could forward the reports through the Secretary-General to the human rights committee, or to any other body.

30. The European Convention for the Protection of Human Rights and Fundamental Freedoms had previously been cited as a model for the draft Covenants, but he drew the Committee's attention to the statement in paragraph 7 of document A/5411 that "A direct reporting system for civil and political rights is not contemplated in either the European Convention or the Inter-American draft Convention...". He wondered why some Powers were so insistent about establishing compulsory reports under the Covenant when that system did not exist in the regional covenants to which they were parties.

31. Mr. RIOS (Panama) said that he could support article 39 bis as proposed by its sponsors whom he commended for their contribution. He also approved the United States and United Kingdom sub-amendments, although he felt that the new paragraph 3 proposed by the United Kingdom would be clearer if it read approximately as follows: "The Secretary-General shall transmit to the specialized agencies concerned such parts of the reports as may fall within their field of competence."

32. Miss HART (New Zealand) said that under paragraphs 1 and 2 of the proposed article 39 bis the

States parties would apparently be allowed unlimited time in which to carry out the obligations which they assumed on acceding to the Covenant. Paragraph 1 spoke without qualification of progress made in giving effect to the rights recognized in the Covenant and paragraph 2 spoke of factors and difficulties affecting implementation of the Covenant.

33. The Covenant set forth the obligations assumed by the States parties, and in so far as limitations of the rights stated in the instrument were permitted, they were expressly set out—and very carefully so—in relation to certain individual articles. If countries had difficulty with the way in which a certain right was formulated, they could deal with that situation by means of a reservation. The Covenant also provided, under article 2, paragraph 2, for the possibility that a State party would take measures to enhance the enjoyment of the rights which it was already protecting. But that paragraph did not in her delegation's view allow States unlimited flexibility in carrying out their obligations under the Covenant. Paragraph 3 of the same article and indeed the Covenant as a whole made it clear that there were certain minimum standards with which States must comply before acceding. However, paragraphs 1 and 2 of the proposed article 39 bis could be read to imply that a State could become a party to the Covenant without in any sense giving effect to the rights set out. She did not believe that that was the intention of the sponsors but if that interpretation were accepted the Covenant might be reduced to a mere declaration of intent. Any conciliation procedure would be virtually invalidated, for in the event of a dispute a party could simply point out that under article 39 bis it had an unlimited margin of time in which to fulfil its obligations.

34. For that reason, and the reasons mentioned by the Canadian representative, she supported the United States sub-amendment to article 39 bis in document A/C.3/L.1391. She thought it perhaps desirable, however, to examine the second sentence of paragraph 2 of the proposed article and to hear from the sponsors what interpretation they attached to it.

35. She supported the United Kingdom sub-amendment (A/C.3/L.1404). If there were legitimate grounds for fearing that the Secretary-General would transmit a report to a specialized agency of which the party concerned was not a member—and she did not believe there were such grounds—perhaps a formulation closer to that employed in the other Covenant (article 17, para. 2 (b)) would be suitable.

36. Mr. QUADRI (Argentina) expressed his delegation's support for the United Kingdom sub-amendment, as it would enable the human rights committee to give effect to the purposes of the Covenant and would prevent duplication and overlapping.

37. Mrs. DAES (Greece) agreed with the view expressed by the Canadian representative. The article under consideration was one of the most important in the Covenant, but in its present form it was too imprecise. She supported the United States sub-amendment and also the new paragraph proposed by the United Kingdom.

38. Mr. SAKSENA (India), referring to the United States sub-amendment to article 39 bis in document A/C.3/L.1391 said that the question of the type of action—legislative, judicial or other—taken to give effect to the rights recognized in the Covenant had been thoroughly considered by the sponsors of the proposed article 39 bis. They had concluded that it was preferable not to specify the contents of the reports. He would much prefer a provision such as the one proposed in document A/C.3/L.1379/Rev.1 of which India was a co-sponsor and which would leave more scope for the establishment of reports than the more "specific" system suggested in the United States sub-amendment.

39. With regard to the Tunisian representative's suggestion that reports should be made to the Economic and Social Council rather than to the human rights committee, he pointed out that the human rights committee had already been provided for in the draft under article 27. If the committee were not even assigned the primary function of receiving and reviewing reports, it would become a superfluous body. It was true that the European Convention as well as the Inter-American draft convention did not contemplate a direct reporting system for civil and political rights, but those instruments of a regional character were based on different premises and envisaged an implementation machinery quite different from the one designed for the present draft Covenant. He appealed to the Tunisian representative not to persist in his opposition to article 39 bis.

40. In connexion with the United Kingdom sub-amendment (A/C.3/L.1404) he wished, first, to assure the representatives of the specialized agencies of the high regard in which the sponsors of the proposed new article held those agencies and of the sponsors' desire to give due recognition to the part the agencies were playing. At the same time, he doubted the usefulness of the United Kingdom amendment, which was taken from article 49, paragraph 4, of the draft prepared by the Commission on Human Rights. Paragraph 5 of that article provided that the specialized agencies could submit observations. Since there was general agreement that specialized agencies should not be called upon to make observations, little purpose would be served by providing that the agencies should receive parts of the reports. Moreover, the draft Covenant would not exonerate States parties from their obligations to the existing conventions of the specialized agencies of which they were parties; under those instruments they would be sending their reports on relevant questions directly to the agencies concerned. It was therefore unnecessary to provide for such transmission of parts of reports as was intended in the United Kingdom proposal. Notwithstanding those views, he was prepared to support a proposal on the subject which would provide for co-ordination in the reporting system of the Covenant and that of other instruments of the specialized agencies. Such a proposal, however, should take into account the valid arguments advanced by the USSR and other delegations that reports of those signatory States which were not members of certain specialized agencies or not parties to the instruments of an agency in the field of human rights, should not be sent to those agencies.

41. Mr. GOONERATNE (Ceylon) welcomed a reference to the specialized agencies in the article, but had misgivings concerning the drafting of the United Kingdom text. He hoped that the United Kingdom representative would consider rephrasing her amendment along the lines of the similar provision in the draft Covenant on Economic, Social and Cultural Rights.

42. Mr. AKPO (Togo) called for a redrafting of article 39 bis as proposed in document A/C.3/L.1379/Rev.1, since it was not logical to provide that a State which did not recognize the competence of the human rights committee should be under obligation to submit reports to it.

43. Mrs. SOUMAH (Guinea) recalled that her delegation had favoured a single system of implementation for the two Covenants, which were ultimately linked, political freedom having small value without economic freedom, and vice versa. In a spirit of compromise, however, it had accepted the establishment of a human rights committee. It could not accept the United States sub-amendment to article 39 bis in document A/C.3/L.1391 which would introduce an obligatory procedure. It was difficult to see how such a procedure could function together with an optional one.

44. Mr. HOVEYDA (Iran), referring to the United States sub-amendment recalled that, two weeks earlier, the Committee had discussed a similarly worded Italian proposal in connexion with the draft Covenant on Economic, Social and Cultural Rights. The Italian delegation had agreed to withdraw that proposal. He requested the United States representative to do likewise, so that the two Covenants might not have different provisions concerning reporting.

45. With regard to the United Kingdom sub-amendment (A/C.3/L.1404) he appreciated the sponsor's concern that reference should be made to the specialized agencies, but felt that the proposed new paragraph 3 could not be incorporated in the text as it stood. In the first place, it appeared to give the specialized agencies precedence over the Economic and Social Council, since it provided for mandatory receipt of parts of the reports by the agencies, whereas paragraph 3 of the proposed article 39 bis provided only permissively for transmission of the reports to the Economic and Social Council. Secondly, the logical place for a provision relating to communication of reports to the specialized agencies was at the end of the same paragraph 3, to which a sentence on the subject could be added. Speaking for his own delegation, and not on behalf of the other sponsors of document A/C.3/L.1379/Rev.1, he said that the United Kingdom amendment, revised accordingly, would usefully complete the proposed article 39 bis.

46. Mr. GONZALEZ DE LEON (Mexico) said that, although no direct reporting system was provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the Inter-American draft convention on human rights, a well-established system of reporting on the implementation of conventions existed in the International Labour Organisation. He would refer delegations to articles

19, 23 and 24 of the ILO Constitution, relating to that point.

47. The CHAIRMAN drew attention to the need for the Committee to proceed more rapidly with its work

and observed that consideration might have to be given to holding meetings outside regular hours. She took note of suggestions by delegations on that point.

The meeting rose at 6.10 p.m.