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CONTENTS

Chairman: Mrs. Halima EMBAREK WARZAZI (Morocco).

AGENDA ITEM 62

Draft International Covenants on Human Rights (continued)

FINAL CLAUSES OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued) (A/2929, CHAP. X; A/5702 AND ADD.1, A/6342, ANNEX II.A, PART V; A/C.3/L.1353/REV.2, A/C.3/L.1359, A/C.3/L.1370, A/C.3/L.1372, A/C.3/L.1374, A/C.3/L.1375, A/C.3/L.1377, A/C.3/L.1378)

1. The CHAIRMAN said that the Committee had before it a revised text of the new article proposed by the United Kingdom (A/C.3/L.1353/Rev.2) to be inserted after article 28 of the draft Covenant on Economic, Social and Cultural Rights (A/6342, annex II.A, part V). Amendments to the United Kingdom proposal had been submitted by Chile (A/C.3/L.1378).

2. Mr. PAOLINI (France) noted that the United Kingdom proposal was applicable to the two draft Covenants, whereas the Chilean amendments related only to the draft Covenant on Economic, Social and Cultural Rights. His delegation thought it would be best to centre the debate on the latter Covenant: any discussion of reservations to the draft Covenant on Civil and Political Rights, before the measures for the implementation of that instrument had been considered, seemed premature. Moreover, the obligations arising out of the two Covenants were not of the same nature: the commitments that would arise out of the Covenant on Economic, Social and Cultural Rights were gradual in character, whereas those arising out of the Covenant on Civil and Political Rights would be immediately binding. His delegation accordingly suggested that the United Kingdom proposal should be considered only in relation to the Covenant under study, and should be taken up again at the appropriate time in the context of the Covenant on Civil and Political Rights.

3. The CHAIRMAN said that would be done.

4. Lady GAITSKELL (United Kingdom) pointed out that the new version of her proposal differed from the earlier version only on minor points. The question of a reservations article was inevitably a somewhat complex legal subject. Instruments as detailed in content as the Covenants were unlikely to be universally acceptable in every part; different countries with different legal and social systems might well see the need to make minor reservations on one or other provision, and in the absence of a specific clause States could invoke the rules of international law. The question was, therefore, whether such a clause was needed in the Covenant. Her delegation recognized that the Covenant's silence on the question of reservations would allow more flexibility to States, but it thought that such a method would be damaging to the universality of the Covenant and would cause great confusion in treaty relationships. The Covenant would, as a result, be in force in a varying degree between any two States parties and that degree would be determined by the extent to which reservations had been made and accepted or rejected on a bilateral basis. While such a system might be acceptable or even desirable where a multilateral treaty of a technical nature was concerned, it would be inappropriate in the field of human rights. Bearing in mind the recommendation of the International Law Commission, her delegation considered it advisable that a reservations clause should be inserted in the Covenant to ensure the greatest consistency and universality in the application of the Covenant and to safeguard the stability of treaty relationships. Minor reservations which were not incompatible with the purpose of the Covenant would be allowed. In addition, the solution proposed by her delegation would, through the use of the two-thirds criterion, remove all uncertainty as to the status and effect of any reservation made.

5. Begum HASHIMUDDIN (Pakistan) regretted that, even before it had adopted the Covenant on Economic, Social and Cultural Rights, the Committee should be concerned with reservations; her own delegation earnestly hoped that that instrument would be accepted universally and that it would be applied by all countries without reservation.

6. So far as the new article proposed by the United Kingdom delegation (A/C.3/L.1353/Rev.2) was concerned, paragraph 1 simply restated a universally recognized principle of international law, namely, that a State acceding to a treaty or a multilateral covenant could make only such reservations as were not incompatible with the object and purpose of that treaty or covenant; she therefore considered that provision unnecessary. On the other hand, she had no objection to paragraphs 2, 3, 6 and 7, which

described the normal procedure followed by the United Nations in such matters.

7. It was to be feared that paragraph 4 would create more difficulties than it would solve and that it would produce an effect exactly opposite to its apparent objective, which was to facilitate the making of reservations. It did not seem unduly pessimistic to state that it would be difficult to obtain acceptance of a given reservation by two thirds of the States parties to the Covenant and that, in any event, obtaining that number of acceptances would take a considerable time. If the object was to discourage the signatory States from entering reservations or to make it impossible for States parties to the Covenant to enter reservations, it would be best to say so clearly rather than to resort to complicated and indirect procedures. The same comments were applicable to paragraph 5.

8. Mr. ABOUL NASR (United Arab Republic) said that in the matter of reservations he favoured the adoption of a liberal system which would facilitate the accession of States while safeguarding their sovereignty. He considered the United Kingdom proposal unacceptable and agreed with the Pakistan representative that the adoption of such a clause would create more problems than it would solve. Accordingly, the application of the rules of international law must suffice. It would be preferable to abide by the solution adopted by the Commission on Human Rights.

9. Mr. RESICH (Poland) endorsed the principle of international law whereby any State might make reservations to an international treaty. Furthermore, the question of reservations to multilateral treaties had been taken up by the International Law Commission in its draft articles on the law of treaties, article 16 of which provided that a State might formulate a reservation if the latter met certain conditions, while article 17, paragraph 4 (b), provided that "An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State" (A/6309/Rev.1, [1] p. 35). That system of relative participation made it possible for every party to a multilateral treaty not to be bound vis-à-vis every other party. Where a covenant of a universal nature was concerned, it was particularly necessary to adopt a liberal system which would allow all countries of the world to become parties. The solution adopted by the Commission on Human Rights was along those lines. The United Kingdom amendment, by contrast, would establish a rigid system which might impair the universality of the Covenant.

10. Mr. MOMMERSTEEG (Netherlands) said that it was necessary first of all to decide whether an article on reservations should be inserted in the Covenants. It could be argued that human rights were essential and that it would be improper to limit their scope by authorizing reservations in regard to them. The argument set forth in document A/2929, chap. X, para. 27 could also be advanced, i.e. that the Covenants were not instruments by which one State granted to another certain benefits on a reciprocal basis or in exchange for some other benefits; they granted rights to individuals and not to the States parties themselves. The latter argument could well be advanced in support of the inadmissibility of reservations. Whatever its theoretical value, however, it was somewhat questionable in practice: many States would be unable to live up immediately to the international standards laid down in the Covenants and if no reservations were authorized, very few would be able to ratify the Covenants in the near future. Once the general principle of the admissibility of reservations was admitted, however, it might be wondered whether an exception should not be made in the case of the draft Covenant on Economic, Social and Cultural Rights, which was to be implemented progressively. That was not his delegation's view, for some articles of that Covenant, particularly articles 8 and 14, had an affinity with civil and political rights.

11. If the principle of the admissibility of reservations was accepted, it must be decided whether or not the text of the Covenant should remain silent on that point. In the absence of any special provision, reservations would be authorized in so far as they were not incompatible with the Covenant's purposes, for that was the criterion laid down by the International Court of Justice in its advisory opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide [2] and also by the International Law Commission in its draft articles on the law of treaties. The other solution would be to adopt the United Kingdom proposal, which defined in detail the procedure to be followed with regard to reservations. If the first solution was adopted, it would be for each State party to decide whether or not the reservation formulated was acceptable and the Covenant might lose its universal character and disintegrate into a series of bilateral agreements. On the other hand, the solution proposed by the United Kingdom had the advantage of containing rules concerning the legal effect of reservations and of defining clearly the procedure to be followed in order to establish the status of the reserving State vis-à-vis the States parties, which was particularly necessary since the Covenant was not an ordinary multilateral treaty but a United Nations covenant. Furthermore, the Economic and Social Council could only perform the functions entrusted to it under articles 17-25 if it knew which of the reserving States were parties to the Covenant, and it was possible for the Council to make such decisions itself. That was an additional reason why his delegation would support the United Kingdom proposal.

12. Mrs. SEKANINOVA-CAKRTOVA (Czechoslovakia) said that her delegation's position regarding reservations to multilateral international treaties was based on the principle of international law according to which every State had the right to enter reservations compatible with the purposes of the treaty concerned. That principle was in full harmony with contemporary international law, which was based on respect for State sovereignty, contractual equality, the universality of multilateral treaties and the stability of treaty obligations. The concept of reservations had two aspects, i.e., the right to formulate

[1] Official Records of the General Assembly, Twenty-first Session, Supplement No. 9.

[2] Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 15.

reservations and the right to formulate objections. In considering the United Kingdom amendment, it was necessary to bear in mind particularly the legal effects of reservations, which would be reflected in the relations between the States parties, depending on the extent to which each party considered the reservations compatible with the purposes of the treaty. The formulation of a reservation did not prevent a State from becoming a party to a treaty; it only meant that that State's relations with each of the other States parties might differ, depending on the reservations and the objections to them. In her delegation's view, the United Kingdom amendment was not in keeping with the recognized principles of international law, for it made a reserving State's participation dependent on acceptance of its reservation by a certain number of States parties. Moreover, there was a contradiction between paragraphs 1 and 4 of the amendment, for paragraph 1 rightly set forth the criterion of compatibility with the purposes of the Covenant, whereas paragraph 4 made the admissibility of the reservation depend on its acceptance by two thirds of the States parties: the two concepts were quite different. For instance a reservation incompatible with the Covenant's purposes might be accepted by two thirds of the States parties or a compatible one might be objected to. The adoption of the United Kingdom amendment might lead to discrimination and prejudice the Covenant's universality. Since international law recognized the principle of reservations, it was not necessary to insert an article on that subject in the Covenant. Her delegation was opposed to the new article proposed by the United Kingdom.

13. Mr. BAZAN (Chile), speaking on behalf of the delegations of Uruguay and Chile, said that, as was borne out by the official records of the Commission on Human Rights, those two countries had, since 1950, supported the inadmissibility of reservations, for very cogent reasons. To authorize reservations to a Covenant which simply obliged States parties to submit periodic reports would be to weaken the instrument itself and run the risk of transforming it into a completely useless document. Moreover, article 2 recognized that the States parties might not be able to ensure full enjoyment of the rights specified immediately. There was no point in authorizing reservations if the Covenant itself provided for the progressive implementation of the obligations it imposed. A State party could not be allowed to evade, by formulating a reservation, the fundamental obligation to ensure progressively the full enjoyment of the rights recognized in the Covenant. Similarly, a State could not thus be permitted to escape the obligation to keep the other States parties informed, particularly in view of the General Assembly's obligations under Article 13 of the United Nations Charter. Furthermore, if reservations were admitted, they must be either accepted or rejected, but it was difficult to see how a State party could accept a reservation in the sphere of human rights, for it would thus be compromising a right which belonged not to it but to the nationals of the reserving State. The prohibition of reservations in the case of a specific covenant was not contrary to the principles of international law or the principle of State sovereignty. Consequently, without prejudging the question in the case of the draft Covenant on Civil and Political Rights to which, for special reasons, reservations could legitimately be formulated, the Uruguayan and Chilean delegations wished to insert in the draft Covenant under consideration an article expressly prohibiting reservations, and they would support any initiative to that end.

14. Speaking on behalf of the Chilean delegation, he said that the United Kingdom proposal seemed to reflect the majority view, i.e., that reservations should be admitted. Reservations should, at any rate, be only temporary: to admit definitive reservations would be tantamount to admitting that a State could permanently evade the obligation to ensure the progressive application of the rights laid down in the Covenant. If the General Assembly approved a text sanctioning the admissibility of reservations of unlimited duration, it would be violating the Charter and failing in its duties with regard to human rights. It was those considerations which had prompted his delegation to submit its amendments (A/C.3/L.1378). The United Kingdom text provided that States could withdraw their reservations, whereas the Chilean amendments would oblige a State making a reservation to specify the period for which it was made. In adopting the latter amendments the Committee would be approving a system which, although sufficiently liberal, would ensure the universal and unrestricted implementation of the Covenant's provisions in the relatively near future.

15. Mr. OSBORN (Australia) supported the United Kingdom proposal. The field of human rights was so vast that various problems would certainly arise in the different countries. Some would perhaps have to solve constitutional problems or set up special machinery for the implementation of those rights. Accordingly, in order to allow the greatest possible number of countries to become parties to the Covenant, it was advisable to accept the formulation of reservations. However, to avoid the creation of an intricate network of bilateral relations, it was essential to specify that those reservations must not be incompatible with the purposes of the Covenant and must be acceptable to a substantial number of the States parties. The United Kingdom proposal made that essential point.

16. Mr. CAPOTORTI (Italy) said that the United Kingdom proposal ought to be considered side by side with the rules of international law as set forth in draft articles 16 to 20 on the law of treaties drawn up by the International Law Commission (A/6309/Rev.1, pp. 35-41). The proposed text began by referring, on the one hand, to the principle of the admissibility of reservations, so that any uncertainty or possible dispute might be avoided and, on the other hand, to the criterion of compatibility. In that connexion he referred to the International Law Commission's commentary on draft article 16 of its text on the law of treaties. Secondly, it was preferable to define the procedure by which reservations or their withdrawal would be communicated to States parties; in that respect, paragraphs 2, 3 and 6 of the new article proposed by the United Kingdom contained useful suggestions. Lastly, there was the question of the legal effect of reservations. In his opinion, it was on

that question that the generally accepted system differed from that advocated by the United Kingdom delegation. For, if the provisions of article 17, paragraph 4 (b), of the International Law Commission's draft on the law of treaties were applied, there might be a danger that the Covenant would disintegrate into a series of bilateral instruments. On the other hand, if the United Kingdom proposal were accepted, the rejection of a reservation by more than one third of the States parties to the Covenant would be sufficient to prevent the reserving State from becoming a party to it; that would make it possible to avoid the danger to which he had just referred. Again, the question of the compatibility of reservations might open the door to interminable disputes and relations between reserving and objecting States might become very uncertain. The same problem had already arisen in connexion with the International Convention on the Elimination of All Forms of Racial Discrimination and many delegations anxious to strengthen that instrument had proposed including in it a clause similar to the one at present under consideration. It would seem prudent for the Committee to take the same course if it wished the Covenant to be effective. In his delegation's views, it would be advisable to consider paragraphs 1, 2, 3, 6 and 7 of the new article proposed by the United Kingdom separately, as they did not bear on the central question. As for the amendments submitted by Chile, his delegation had read them with interest, but considered it might be difficult for some States to specify the duration of their temporary reservations. Practical needs must be taken into account and the more flexible solution given in paragraph 7 if the United Kingdom text was to be preferred to the excessively rigid Chilean formula.

17. Mr. GLAZER (Romania) said that his delegation endorsed the principle of the universality of general international treaties, i.e., the system whereby any State wishing to become a party to such a treaty had the right to accede to it with reservations. It therefore could not accept the United Kingdom proposal (A/C.3/L.1353/Rev.2) which restricted that right, thereby contravening the rules governing the question of reservations. The Covenant on Economic, Social and Cultural Rights contained a great many quite detailed articles; to deny, or to restrict, the right of a State to formulate reservations to the Covenant and, at the same time, to restrict the right of contracting States to object to such reservations, could only make accession to the Covenant extremely difficult, if not impossible.

18. Moreover, it was plain that implementation of the Covenant would inevitably raise various problems for a good many States which, in certain cases, would have to modify their domestic legislation and at the same time see to it that the provisions of the Covenant were carried out. A two-fold effort of that kind needed time and it was essential to give States unable to change conditions in their territories overnight the possibility of putting the rights proclaimed into effect progressively. Failure to do so would thwart the desired aim, which was to ensure the universal application of the Covenant.

19. His delegation stressed the need to safeguard fully the sovereign rights of States desiring to become parties to instruments relating to human rights, either by not mentioning reservations at all or by merely declaring that reservations could be made.

20. Moreover, his delegation objected to paragraph 4 of the new article proposed by the United Kingdom, for, in its opinion, it represented a significant departure from the practice adopted by the General Assembly and from the principle of universality, by virtue of which a reserving State and any other State accepting its reservation were bound by the treaty. To make the admissibility of a reservation contingent on its acceptance by two thirds of the States concerned was to ignore the respect due to the State making the reservation on the one hand and the State accepting it on the other. Moreover, it would amount in practice to prohibiting the formulation of reservations, for if a reserving State, i.e., by definition a State which had been in the minority group, at the time the text in question was drafted, had been unable to obtain a simple majority at that stage, it was extremely unlikely that it would be able to get its reservation accepted by two thirds of the States parties after the Covenant had come into force.

21. The precedent of the International Convention on the Elimination of All Forms of Racial Discrimination could not be invoked in support of the United Kingdom proposal, for clearly what was justified for specific reasons in the fight against racism was no longer justified in the case of a system of rules as complex as that provided for in the Covenant on Economic, Social and Cultural Rights.

22. The criterion of compatibility of reservations with the object and purpose of the Covenant was, obviously, a very subjective one. A State acceding to a convention with a reservation was, naturally, convinced that its reservation was compatible with the object and purpose of that convention; on its side, a State objecting to that reservation also justified its attitude by claiming that the reservation was incompatible with the object and purpose of the convention. Which of those two States was right? Who would decide the dispute? Would it be the General Assembly, that might very well contain States which had not acceded to the covenant and which would nevertheless be given the possibility of preventing a reserving State from becoming a party to the covenant? Or would it be the two thirds of the States parties which would risk, for political reasons, rejecting reservations perfectly compatible with the object and purpose of the convention? It should also be noted that under the system proposed by the United Kingdom, the decision concerning the compatibility of a given reservation might vary according to the number of States parties at the time the reservation was entered; it was perfectly conceivable that a reservation accepted at one time as being compatible with the object and purpose of the Covenant might be rejected a few years later because of a change in the majority due to the accession of new States.

23. It was thus apparent that the provisions of the new article proposed by the United Kingdom raised more problems than they solved. For its part, the Romanian delegation was sure that human rights could only be safeguarded by complete respect for the funda-

mental principles of contemporary international law and considered that it would be wiser not to adopt a text which, in its opinion, ran counter to those principles. The solution adopted by the Commission on Human Rights was without doubt the best one, but if it was considered desirable to mention reservations, a brief article could, if really necessary, be adopted affirming the right of any State to accede to the Covenant with reservations.

24. Miss HART (New Zealand) said she believed it would be proper to include in the Covenant on Economic, Social and Cultural Rights a clause concerning the admissibility of reservations and the effect which reservations might have for the State which had made them; needless to say, the inclusion of such a clause was fully justified in the case of the Covenant on Civil and Political Rights, which was to be implemented immediately. While recognizing that in view of the very nature of the Covenant under consideration—which left States a latitude which was not normally present in such instruments, in that it provided for the progressive realization of the rights set out—there would probably be relatively few States which would consider it necessary to make reservations at the time of depositing their instrument of ratification or accession, her delegation thought that certain States could be expected to find it difficult to ratify the Covenant without reservations. Her own delegation had consistently held the view that the United Nations should give serious consideration to the possibility of inserting a reservations clause in all important multilateral treaties prepared by it. In that belief, her delegation had, at the preceding session, supported the insertion of such an article in the International Convention on the Elimination of All Forms of Racial Discrimination. That article was very similar in substance to the one now before the Committee. The question of reservations obviously raised very complicated and difficult problems, and there was not, at present, any universally accepted rule of international law in the matter. It would be recalled, however, that in resolution 598 (VI) of 12 January 1952, the General Assembly had recommended that the organs of the United Nations, in the course of preparing multilateral conventions, should "consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them". It was to be hoped that the future international conference of plenipotentiaries on the law of treaties would succeed in formulating a precise definition of the procedure which should be applied in the absence of a reservations clause. In any case, it seemed to her delegation that in any given treaty, there would be less risk of confusion if the question of reservations was dealt with in the instrument itself.

25. Assuming that the Committee accepted the principle of including a reservations article in the Covenant, it would be necessary to spell out in that article what reservations were admissible, when and how they might be made, which States could accept or reject them, the time-limit for objecting to them, and, lastly, the effects of an objection to a reservation on the instrument of ratification of the party making the reservation.

26. In that respect, the new article proposed by the United Kingdom delegation (A/C.3/L.1353/Rev.2) appeared satisfactory to her delegation. While acknowledging the right of States to make reservations, that text prohibited reservations which might compromise the fundamental purposes of the Covenant. In addition, it stated clearly what would be the effect of a reservation on the instrument of ratification of the State which had made the reservation.

27. Mr. NETTEL (Austria) did not consider it absolutely necessary to include an article on reservations in the Covenant on Economic, Social and Cultural Rights, inasmuch as it was explicitly recognized that the full implementation of the rights referred to in that Covenant would necessarily be a gradual process.

28. That argument obviously did not hold for the Covenant on Civil and Political Rights, which referred to rights which could be guaranteed immediately.

29. Mr. ABOUL NASR (United Arab Republic) observed, with reference to the Italian representative's remarks concerning the disintegration which might result from a liberal system of reservations, that such a system was giving entirely satisfactory results within the Organization of American States: in OAS practice, a reservation was first communicated to the signatory States, for their consideration, and if the reserving State maintained the reservation, it became a party to the convention vis-à-vis those States which accepted the reservation, but the convention did not enter into force between the reserving State and a State which did not accept the reservation. There could be no doubt that that liberal system made it easier for States to participate in multilateral conventions.

30. Mr. N'GALLI-MARSALA (Congo, Brazzaville) said that he, too, was not convinced of the usefulness of an article on reservations of the kind proposed by the United Kingdom delegation.

31. He wondered what would be the situation of a State which had made a reservation if more than one third of the States parties refused to accept that reservation.

32. Mrs. HARRIS (United States of America) said that her delegation did not favour the inclusion of an article on reservations in the Covenant, since in its opinion the absence of a formal clause would encourage the accession of States. The absence of such a clause would not exclude reservations, however, since, as provided in article 16 of the draft articles on the law of treaties prepared by the International Law Commission, in the absence of provisions on reservations in the treaty, a State could formulate a reservation provided that it was not incompatible with the object and purpose of the treaty. The absence of provisions on formal reservations in a multilateral convention might of course give rise to certain problems. As the International Law Commission had pointed out, it was impractical in the case of multilateral treaties, to require the unanimous agreement of the other parties to a reservation. It was quite possible that one State party might be disposed to object to a reservation which all the others accepted.

33. The new article proposed by the United Kingdom (A/C.3/L.1353/Rev.2) offered one approach to the

problems which might arise in that regard. It seemed to her delegation, however, that a better approach was to accept the generally accepted rules governing reservations in the law of treaties. First, it was a generally recognized principle of international law that a State could not be bound without its consent; consequently, no reservation should be effective against a State objecting to it. On the other hand, it was a generally recognized principle of international law that a State making a reservation to a multilateral treaty was considered to be a party to that treaty by the States which did not object to the reservation.

34. The new article proposed by the United Kingdom was therefore unnecessary. The integrity of the Covenant could not be seriously impaired unless a reservation of a very substantial nature was formulated by a number of States, which was unlikely, and even then the Covenant itself would continue to be the law governing the participating States. The essential point was that a sufficient number of States should become parties to the Covenant by accepting the bulk of its provisions. The possibility of formulating reservations would encourage accession to the Covenant and, in view of the wide variety of countries represented in the United Nations, it could be assumed that the power to make reservations without the risk of being excluded by the objection of a small number of States would promote general acceptance of the Covenant.

35. To sum up, her delegation agreed with the view of the International Law Commission that in the case of a multilateral treaty such as the Covenant on Economic, Social and Cultural Rights, the advantages of a flexible system under which each State could make reservations and decide whether to accept reservations of other States outweighed the possible advantages of a more rigid system.

36. Mr. VANDERPUYE (Ghana) emphasized the legal difficulties and political controversy attaching to the question of the legal effect of reservations and, in particular, the point whether, when a treaty was the subject of reservations, all its provisions, with the exception of those in respect of which reservations were made, were binding on the State which had made the reservations and upon all the other States parties to the treaty. He reminded the Committee that in the advisory opinion it had given in 1951 concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice had accepted the practice of reservations, and had pointed out, in favour of a relatively flexible system in the matter, that if a State was compelled by moral pressure to participate in drafting a legal instrument, it could not be expected to yield to majority vote in matters on which it did not wish to be committed.

37. In the case of the Covenants, it could be presumed that the Commission on Human Rights had omitted reservation clauses, because it realized full well that the provisions contained in those instruments were the minimum required for the preservation of basic human rights in accordance with the principles and purposes of the United Nations Charter. In that respect, the Covenants could be considered to have a moral aim, like the Convention on the Prevention and Punishment of the Crime of Genocide, and would depend for their authority on the participation of all States. That did not, of course, mean that some reservations were not admissible, provided they were of a limited nature and not incompatible with the aims and purposes of the Covenant.

38. In those circumstances, he wondered whether it was necessary to include a reservation clause in the Covenant. The question of reservations to multilateral conventions was a very delicate one, as was shown by the discussion in the Commission on Human Rights on the admissibility or non-admissibility of reservations. In that connexion, the International Court of Justice had accepted the thesis that the right of States to make reservations was inherent in the process by which the drafting of international instruments was based on the system of majority voting and not on the unanimity of the participants. Obviously, States which took a minority view at the drafting stage must be allowed the right to make reservations which would enable them to accede to the instruments in question without compromising their sovereignty. According to article 16 of the draft articles on the law of treaties drawn up by the International Law Commission, unless the reservation was expressly prohibited by the treaty, a State could exercise its sovereign right to formulate any reservation to a multilateral convention which proved acceptable to other States, provided the reservation was not incompatible with the purposes and aims of the convention. In the particular case of the Covenants, the Committee might hesitate between two approaches, either to prohibit reservations in order to preserve the integrity of those instruments, or to adopt a liberal system in that regard so as to facilitate accession by the greatest possible number of States, at the risk of compromising the integrity of the Covenants. His delegation thought that a balance should be maintained between the two alternatives and that that end would be best served by not including any reservation clause in the Covenants. It therefore appealed to the United Kingdom representative to withdraw the amendment under discussion (A/C.3/L.1353/Rev.2) and perhaps also, in consequence, her amendments to article 26 bis (A/C.3/L.1375).

39. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that he formally opposed the inclusion in the two Covenants of the provisions contained in the amendment submitted by the United Kingdom (A/C.3/L.1353/Rev.2). In his view the question of reservations should not be mentioned in the Covenant under consideration, and he proposed conformity on that point with the norms of international law, which allowed any State to make reservations to a multilateral convention, on the understanding that the States parties to the convention had the right to accept or reject them. That procedure had been followed in the case of many international conventions, such as the Convention on the Territorial Sea and the Contiguous Zone, the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963). The question of reservations had also been raised in connexion with ratification of the Convention on the Prevention and Punishment of the Crime of Genocide. The problem was therefore not new; it had already been considered and resolved by the General Assembly and the International Law

Commission considered that in view of the principle of universality recognized by international law, it was not necessary to include a reservation clause in an international convention. In fact, the absence of any such clause could only facilitate the implementation of the convention, by eliminating difficulties which might arise at the time of its ratification. The Commission on Human Rights had been very wise in making no provision for a reservation clause in either of the two Covenants before the Third Committee.

40. The United Kingdom representative had said that the object of her amendment was to ensure the universality of the Covenant. However, a reservation clause would, on the contrary, be an obstacle to ratification of the Covenant by the greatest possible number of countries. The United Kingdom's position in that regard was well known: it was opposed to the universality of the Covenant, and it was still trying, by creating more complex conditions for ratification, to prevent the accession of all States. The ratification procedure was, undoubtedly, a very difficult question, and the draft convention to be submitted to the international conference of plenipotentiaries on the law of treaties contained a series of articles relating to it. However, at the present stage, the Third Committee should not introduce into the draft Covenant a new principle which ran counter to international law. He thus agreed with those delegations which thought a reservation article would serve no purpose and likewise appealed to the United Kingdom to withdraw its proposal. He would vote against that proposal if it was maintained.

41. Miss TABBARA (Lebanon) said she was opposed to the inclusion of an article on reservations in the draft Covenant on Economic, Social and Cultural Rights, not on principle—for she recognized that in certain cases the right to make reservations must be limited—but because she did not see the need for it in the present case. The implementation of the Covenant must be progressive and there was no doubt that any reservations would only concern the time required for implementation and not the principles established in the Covenant. There was, therefore, no danger that States might abuse their right to make reservations. Furthermore, the organs which would judge the admissibility of reservations were political organs, which was hardly suitable in the case of a convention which was to guarantee economic, social and cultural rights. The representative of Italy had pointed out that the International Convention on the Elimination of All Forms of Racial Discrimination included a reservation article similar to that proposed by the United Kingdom. It was true that Lebanon had accepted that article, but the same principle could not be applied to all conventions. The International Convention on the Elimination of All Forms of Racial Discrimination related to a single, universally recognized right; any reservation was thus inadmissible, and the clause making admissibility a reservation contingent upon its acceptance by two thirds of the States parties represented a compromise. Such a compromise was not justified in the case of the present Covenant.

42. Mrs. OULD DADDAH (Mauritania) pointed out, for the benefit of the representative of Italy, who had expressed surprise that the attitude adopted by the Afro-Asian States on the question of reservations to the present Covenant was different from the attitude they had adopted in regard to the International Convention on the Elimination of All Forms of Racial Discrimination, that the change of attitude was due, as the representative of Lebanon had said, to the fundamental difference between the International Convention on the Elimination of All Forms of Racial Discrimination and the Covenant on Economic, Social and Cultural Rights. It was true that the questions dealt with in those two instruments were, in both cases, of exceptional importance in the eyes of the developing countries, but it should not be forgotten that the latter had participated in the drafting of the Convention, while for the most part, they had not taken part in the drafting of the Covenant, since a large number of them had not then been Members of the United Nations. The Covenant had, therefore, not taken full account of their problems. That made a considerable difference.

43. Mr. DAS (Malaysia) said that the chief aim of the United Nations should be to encourage respect for human rights. It should be borne in mind that every State had its particular problems, and all States must be induced to accede to the Covenant by making the procedure fairly flexible. Once a State had agreed to become a party, even subject to reservations, it could perhaps be persuaded to go the whole way. Reservations should therefore be allowed, because it was important not to discourage States through excessively rigid clauses.

44. Mr. LEVI RUFFINELLI (Paraguay) observed that the right to make reservations was an inalienable principle which safeguarded the sovereignty of States. The United Kingdom proposal, which had the effect of restricting that right, would only create difficulties. The absence of an article on reservations would have no harmful effects and would be in keeping with prevailing practice in international law. Moreover, international experience had shown that the practice of accepting all reservations without restriction facilitated the implementation of conventions. He was therefore opposed to the United Kingdom proposal and felt that an article on reservations should not be included in the Covenant.

45. Lady GAITSKELL (United Kingdom) said that she was encouraged by the statements in favour of including an article on reservations in the Covenant; some of the objections voiced against such an article appeared to be based on misunderstanding, which she would subsequently endeavour to dispel. However, since it was clear that majority opinion in the Committee was against her proposal, she would not insist on putting it to the vote, even though she remained convinced of the value of including a provision on reservations in the Covenant on Economic, Social and Cultural Rights. The value of such a provision was even more apparent in the case of the Covenant on Civil and Political Rights, since the provisions of the latter could for the most part be implemented immediately and therefore required a different procedure for application. An article on reservations such as suggested by her delegation would be the best means of safeguarding the effectiveness of the latter Covenant and it would be unfortunate if both Covenants were to say nothing about the question of reservations.

She reserved the right to reintroduce her proposal in connexion with the draft Covenant on Civil and Political Rights and hoped for further consultations with other delegations before doing so.

46. Mr. BAZAN (Chile) said that the United Kingdom's withdrawal of its proposal compelled him to withdraw his own amendments (A/C.3/L.1378) to that proposal; he intended to introduce them again when the United Kingdom reintroduced its proposal in connexion with the other Covenant.

47. Mr. NAÑAGAS (Philippines) said that he welcomed the United Kingdom's decision. Since the implementation of the Covenant on Economic, Social and Cultural Rights was to be a gradual process, a fairly flexible system of ratification should be adopted and the existing rules of international law were perfectly suitable.

48. In reply to a question by the CHAIRMAN, Lady GAITSKELL (United Kingdom) said that her delegation was not maintaining its amendments (A/C.3/L.1375) to article 26 bis in so far as related to the draft Covenant on Economic, Social and Cultural Rights.

49. The CHAIRMAN invited the Committee to vote on article 26 bis, which was the subject of an amendment by the United States (A/C.3/L.1372), to which Chile had proposed a sub-amendment (A/C.3/L.1377). She suggested that a vote should be taken first on the Chilean sub-amendment. She recalled that the United States delegation had agreed, at the request of Iran, to replace the words "on the thirtieth day" in paragraphs 1 and 2 by the words "three months"; it had also agreed to thirty-five as the number of instruments of ratification or accession required for the Covenant's entry into force.

50. Mr. PAOLINI (France) requested, in accordance with rule 131 of the rules of procedure, that a vote should be taken first on the United States amendment, since the figure thirty-five proposed in that amendment was the one furthest removed from the figure originally proposed by the Commission on Human Rights.

51. The CHAIRMAN noted that the Committee had to vote first on the Chilean proposal, since it was a sub-amendment to the United States amendment.

At the request of the representative of Chile, a vote was taken by roll-call on the Chilean amendment to the text of article 26 bis proposed by the United States of America.

Kuwait, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: New Zealand, Norway, Paraguay, Peru, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Afghanistan, Argentina, Bolivia, Canada, Chile, Colombia, Denmark, Dominican Republic, Ecuador, Finland, Iceland, Israel, Italy, Jamaica.

Against: Kuwait, Lebanon, Liberia, Libya, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Sudan, Syria, Thailand, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Venezuela, Yugoslavia, Zambia, Algeria, Australia, Austria, Belgium, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Ethiopia, France, Ghana, Greece, Guatemala, Guinea, Guyana, Hungary, India, Indonesia, Iraq, Ivory Coast, Kenya.

Abstaining: Mexico, Philippines, Portugal, Tunisia, Uruguay, Brazil, China, Cyprus, Honduras, Ireland, Japan.

The Chilean amendment to the text of article 26 bis proposed by the United States of America was rejected by 63 votes to 21, with 11 abstentions.

Article 26 bis proposed by the United States of America, as orally amended, was adopted by 90 votes to none, with 1 abstention.

52. The CHAIRMAN invited the Committee to turn to article 29 of the draft Covenant on Economic, Social and Cultural Rights and to the Ukrainian amendments (A/C.3/L.1359) to that article.

53. Mr. KORNYENKO (Ukrainian Soviet Socialist Republic) announced that he was withdrawing his first amendment to article 29. The three other amendments were all based on the same idea, namely, that the adoption of any amendment to the Covenant should be a matter solely for the States parties and not for the General Assembly.

54. Mrs. HARRIS (United States of America) objected to the Ukrainian amendments because they would deprive the General Assembly of any role in the procedure for the adoption of amendments. The draft Covenant had been drawn up under the auspices of the United Nations and before being opened for signature it would have to be submitted to the General Assembly for approval. It was therefore logical that the United Nations, and consequently the General Assembly, should continue to be concerned with it even after it went into effect. Moreover, it was important that all Member States should act in concert in matters concerning human rights. She therefore supported the text of article 29 as drafted by the Commission on Human Rights.

55. Mr. NASINOVSKY (Union of Soviet Socialist Republics) supported the Ukrainian amendments. It was true that the General Assembly had a part in drawing up the draft Covenant but, once that Covenant had been ratified, its fate lay in the hands of the parties and they alone were competent to amend or supplement it. To oblige the parties to submit their amendments to the General Assembly was likely to give rise to disputes, since it was possible that some States that were members of the General Assembly might not be parties to the Covenant. The proposed amendments were designed specifically to avoid such difficulties.

56. Mr. BECK (Hungary) said that he too supported the Ukrainian amendments.

57. He wished to point out that it had been the adoption by the United States of the figure of thirty-five proposed for article 26 bis that had prompted him to

withdraw his own amendment proposing the figure of fifty, so much so that he had been amazed to see the United States voting in favour of the Chilean amendment, or in other words against the very figure which it had accepted.

58. Mrs. HARRIS (United States of America) recalled that, in the article 26 bis which her delegation had proposed, the number of instruments of ratification or accession had not been specified and it had accepted the figure of thirty-five because it had thought that that would enable the Committee to reach a consensus quickly. Her delegation actually favoured the figure of twenty and had therefore voted to its convictions.

59. The CHAIRMAN suggested that, as there appeared to be no speakers on article 29, the discussion on that article should be deferred to the next meeting and that the Committee should take up the new article 29 bis submitted by the United States (A/C.3/L.1374).

60. Mrs. HARRIS (United States of America), introducing her delegation's proposal, pointed out that it entailed no amendment of substance but was designed to rearrange some points already appearing in the draft Covenant by presenting them in a more logical way. Her delegation thought that it would be well to provide an article dealing with the notification which the Secretary-General should send States regarding the signature affixed to the Covenant and the instruments of ratification and accession deposited, as also the date of the entry into force of the Covenant and any amendments. In the opinion of her delegation, such an article should appear at the end of the Covenant.

61. Mr. KORNYENKO (Ukrainian Soviet Socialist Republic) said that he considered the article proposed by the United States delegation quite unnecessary, since it reproduced in substance the text which the Ukrainian SSR had proposed in document A/C.3/L.1359 and which had been adopted as paragraph 5 of article 26.

62. Mr. GUEYE (Senegal) agreed with those comments but pointed out that the text proposed by the United States was much more detailed than that adopted for paragraph 5 of article 26. He wondered whether it would not be possible to combine the two texts, for in view of the adoption of paragraph 5 of article 26 his delegation would find it hard to take a position on the new article proposed by the United States.

63. Mrs. HARRIS (United States of America) recalled that, during the procedural debate that had preceded the vote on the text proposed by the Ukrainian SSR in the second of its amendments to article 26 (A/C.3/L.1359), the United States delegation had pointed out that it would be better to leave the decision upon that text until the Committee came to consider the draft article 29 bis that the United States delegation had submitted in document A/C.3/L.1374. It was clear that the text proposed by the Ukrainian SSR was incomplete and that it had been a mistake to include it as paragraph 5 in article 26. Perhaps there was still time to delete that paragraph.

64. Mr. PAOLINI (France) said that, if there was any duplication, it was between paragraph 5 of article 26 and paragraph (a) of article 29 bis proposed by the United States. Paragraph (a) of that article could perhaps be deleted and only paragraph (b) retained.

65. Mrs. HARRIS (United States of America) pointed out that paragraph 5 of the article 26 that had been adopted did not mention signatures to the Covenant. That was a serious omission.

66. Mr. GUEYE (Senegal) wondered whether it would not be possible to add a phrase to paragraph 5 of article 26 to include the points covered by the United States proposal.

67. The CHAIRMAN asked the Committee to turn its attention to the new article proposed by India, Guatemala, Nigeria and Pakistan (A/C.3/L.1370), which had provisionally been numbered 29 ter, until such time as agreement could be reached on the United States proposal.

68. Mr. GLAZER (Romania) said that, as far as he was concerned, that new article, too, presented some difficulties, in that paragraph 2 of the text raised the question of the States to which the Secretary-General should transmit a certified copy of the Covenant. There again, there should perhaps be a separate vote, or perhaps it should be left to delegations to express any reservations they might see fit to make on the subject.

69. Mr. SINHA (India), speaking on behalf of the sponsors of the proposed new article 29 ter, said that in paragraph 2 the words "belonging to any of the categories mentioned" should be replaced by the words "referred to".

70. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that he could not support that proposal, since his delegation was opposed to paragraph 1 of article 26.

71. His delegation would ask for a separate vote on paragraph 2.

72. After a brief exchange of views, in which Mr. GONZALEZ DE LEON (Mexico), Mr. A. A. MOHAMMED (Nigeria), Mr. LEVI RUFFINELLI (Paraguay) and Mr. CARPIO (Guatemala) took part, the CHAIRMAN suggested that the vote should be deferred until the following meeting.

It was so decided.

The meeting rose at 6.30 p.m.

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