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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 (concluded) (A/2929, CHAP. VII;  
A/5411 AND ADD.1-2, A/5702 AND ADD.1, A/6342,  
ANNEX II.B, PARTS IV AND V; A/C.3/L.1366/  
ADD.3-5, ADD.6 AND CORR.1 AND ADD.7)

1. Miss O'LEARY (Ireland), explaining her delegation's voting at the previous meeting, said that the Lebanese proposal had been ambiguous and confusing. It had put the supporters of the principle of the right of individual petition, of which her delegation was one, in the position of appearing to reject a proposal relating to that principle, while others who did not accept the principle had been put in the position of appearing to favour it. Her delegation had voted against the closure of the debate on the Lebanese proposal, because of the need for further discussion, and against the Lebanese proposal itself, but she wished to make it clear that her delegation supported the principle of the right of individual petition.

2. Mr. PAOLINI (France) said that the procedure followed at the previous meeting had not been in keeping with the rules of procedure. Under rule 132, the Netherlands proposal should have been given priority. The reversal of the proper order was the more regrettable as the Lebanese proposal had been adopted by a very slim majority.

3. The protocol which was to be prepared as a result of the vote must be opened for signature simultaneously with the Covenant itself, and his delegation would be unable to vote on the Covenant as a whole until the protocol had been considered and voted upon.

4. Mrs. BARISH (Costa Rica) said that she had voted against the Lebanese proposal because of her

delegation's desire to safeguard human rights for the benefit of human beings and not of States. It had been said that the proposal was only procedural, but its effect had been to preclude a vote on article 41 bis as proposed (A/C.3/L.1402/Rev.2). It had also been said that the proposal's purpose had been to achieve unanimity, but the result had shown the same division as would have occurred in a vote on article 41 bis. Indeed, had not certain delegations been absent, the Lebanese proposal might well have been defeated. The confused proceedings had not been assisted by the closure of the debate. She nevertheless hoped that, the idea of a separate protocol having been adopted, the principle of individual petition would obtain wide support and that the Covenants and protocol would be completed at the present session.

5. Mr. EGAS (Chile) regretted the procedure followed at the previous meeting under which the Committee, instead of voting on an article which it had fully discussed, had been obliged to vote on an extraneous procedural matter. The vote had proved only that there were conflicting views in the Committee regarding the right of individual petition. His delegation held that the provisions concerning that right should be a part of the Covenant, and he would favour a clear statement to that effect in the protocol.

6. Mr. RUMBOS (Venezuela) said that his delegation had voted against the unexpected proposal of the Lebanese delegation for the same reasons as had prompted it to endorse the proposed article 41 bis. Despite the good intentions underlying the Lebanese proposal, its effect would be to hamper the progressive development of the rights of the individual. Article 41 bis had been discussed at length, and at least as much time should have been given to the Lebanese proposal, particularly in order to find some area of agreement. The Committee's task had been unnecessarily complicated by the action taken.

7. Mr. BECK (Hungary) observed that the vote taken on the Lebanese proposal had demonstrated that proposed article 41 bis could not have been adopted by a significant majority, let alone by anything approaching unanimity. His delegation, having previously indicated its position on the substance of the issue, had voted in favour of the Lebanese proposal with the intention of abstaining on the separate protocol if it was in substance identical to the proposed article 41 bis. Near unanimity might be possible in the vote on the protocol. If, however, the protocol were made to differ substantially from article 41 bis, his delegation would have to vote against it.

8. Miss TABBARA (Lebanon) said she did not think that her delegation's proposal would weaken the protection of human rights. In her view it did not matter

greatly whether the provision was within or outside the Covenant. What was important was that countries should be induced to accept the principle of individual petition, and her delegation for one would do its best to ensure its Government's acceptance of that principle.

9. She had made her proposal in the hope of securing unanimity and in the belief that an article in the Covenant itself would have far less support than was desirable and necessary. Her proposal should not have come as a surprise as she had discussed it privately with many representatives and the idea of a separate protocol had already been put forward. The proposal had not been ambiguous, for the protocol was to be basically the same as the proposed article 41 bis.

10. Mr. JATIVA (Ecuador) said that his delegation, which had strongly supported the proposed article 41 bis, had voted against the Lebanese proposal for reasons of principle and because it had been procedurally improper not to have put the proposed article to the vote.

11. Miss CAO-PINNA (Italy) said that her delegation had voted against the closure of the debate on the Lebanese proposal and against the proposal itself. It had done so because the proposal had been very vague, because it had been related substantively but not formally to the proposed article 41 bis and because the Committee's procedure in the event of the proposal's adoption had been unclear in view of the fact that the Committee had to refer the entire matter of the draft Covenants, and not part of it to the General Assembly.

#### DRAFT PROTOCOL TO THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (A/C.3/L.1411/REV.1)

12. The CHAIRMAN invited the representative of Nigeria to present the draft Protocol (A/C.3/L.1411/Rev.1) and thanked him on behalf of the Committee for preparing it on such short notice.

13. Mr. A. A. MOHAMMED (Nigeria) recalled that his delegation had not opposed the idea of a separate protocol per se but only the loss of time that its preparation and discussion would entail. His delegation had done its best, following the Committee's decision, to draft a protocol embodying all the ideas set out in the proposed article 41 bis (A/C.3/L.1402/Rev.2). The only substantive change was the omission of the word "confidentially" which had appeared in paragraph 5, sub-paragraph (a), of that article; the word had been deleted to meet a point raised by the Tunisian and Upper Volta representatives.

14. The draft Protocol (A/C.3/L.1411/Rev.1) was before the Committee at the request of the majority but contrary to the wishes of a sizable number of delegations. It had been said that the object was to achieve unanimity and he hoped that it could in fact be achieved. Some delegations had championed a separate protocol; he invited them to co-sponsor the draft. In particular, he urged the USSR delegation to become a sponsor since the draft had been intended to some extent to accommodate that delegation's position. He announced that the Canadian delegation had informed him that it would co-sponsor the draft.

15. Mr. MIRZA (Pakistan) said that the hope for unanimity held out at the previous meeting had been dimmed by the Hungarian representative's statement, which had come surprisingly early in the debate. He hoped that delegations would be willing to work patiently towards agreement on the very mild compromise text now proposed as a separate protocol. Since the draft Protocol was basically identical to the proposed article 41 bis, he suggested that it should not be discussed as a new proposal and that statements should be limited to practical suggestions relating to drafting.

16. Mr. OLCAY (Turkey) endorsed the Pakistan representative's suggestions.

17. Mr. TSAO (China) said that, although his delegation would have preferred the inclusion in the Covenant of the article 41 bis proposed in document A/C.3/L.1402/Rev.2 and would have voted in favour of that amendment had it been put to the vote, it would now support the Nigerian proposal for a draft Protocol (A/C.3/L.1411/Rev.1) because it felt that the right of individual petition should be recognized in some way in the Covenant.

18. Miss TABBARA (Lebanon) said that her delegation's proposal at the previous meeting had been submitted in a spirit of co-operation in order to secure unanimity if possible and if not, at least support by the greatest possible majority for the right of individual petition. She could support the present text of the draft Protocol proposed by the Nigerian representative with two drafting changes: the words "and to the United Nations Covenant on Civil and Political Rights (hereinafter referred to as 'The Covenant'))" in the preamble and the words "the Covenant and" in the first sentence and "to the Covenant and" in the second sentence of article 1 should be deleted since the Protocol would be open for signature by all parties to the Covenant.

19. Mr. MOMMERSTEEG (Netherlands) expressed his regret at the order in which proposals had been put to the vote at the previous meeting, which his delegation, like the French delegation, considered inconsistent with the provisions of rule 132 of the rules of procedure, although it recognized the sincerity and good intentions of the Lebanese delegation. His delegation would abide by the decision taken, however, and hoped that both the forty-one delegations which had voted in favour of the proposal for a separate protocol and the thirty-nine delegations which had voted against it because they preferred the article to be included in the Covenant itself would be able to vote in favour of the draft Protocol.

20. Mrs. AFNAN (Iran) expressed her delegation's appreciation of the Lebanese representative's proposal at the previous meeting, which would enable her delegation not to cast a negative vote on the proposed draft Protocol. She wished to put two questions to the sponsor of the proposal in document A/C.3/L.1411/Rev.1. Firstly, referring to article 5, paragraph 1, sub-paragraphs (a) and (b), she wondered whether it was the sponsor's intention that the human rights committee would be unable to receive a complaint even if it had been pending interminably before another international instance. Under the present wording, the human rights committee would have no authority

to decide whether a case brought under the recourse procedure provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms, or any other regional instrument, was unreasonably prolonged. Secondly, she wondered whether article 5, paragraph 3 authorized that committee, which would be a United Nations organ, to correspond directly with individuals without passing through the channel of the State involved.

21. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that the proposal for a separate protocol (A/C.3/L.1411/Rev.1) bore the mark of hasty improvisation. Unless the inaccuracies and some doubtful provisions were removed from that text, his delegation would be unable to vote in its favour.

22. In accordance with international contractual parties, annexes to treaties either clarified or amplified the provisions of the parent document, of which they were an integral part, and the parties to the original document and to the annexes were the same. Under the present proposal the situation was reversed and if a State became a party to the Covenant that did not necessarily mean that it would become a party to the Protocol. Accordingly, it would be juridically improper and unacceptable to annex the Protocol to the Covenant.

23. The draft Protocol contained a number of provisions which had not been included in the proposed article 41 *bis*. For example, the second preambular paragraph made a political evaluation by implying that the purposes of the Covenant and the implementation of its provisions could not be achieved without the Protocol, which was contrary to fact. That provision might properly say only that some States considered it desirable to give the human rights committee the power to receive and consider communications from individuals.

24. Article 1 in its present form could be interpreted as meaning that the parties to the Covenant recognized the competence of the human rights committee to receive individual petitions, whereas only the parties to the Protocol would do so. The word "individuals" used in article 2 could be interpreted as applying to persons different from those mentioned in article 1. Article 5 introduced a totally new concept in the words "all written information". What "information" was meant? Did that word mean "communications"?

25. The drafting of the Protocol revealed such serious shortcomings that, in his view, the text should be carefully and thoroughly revised before it was put to the vote. His delegation could not become a sponsor of the proposal in document A/C.3/L.1411/Rev.1.

26. Mr. RIOS (Panama) said that his delegation would have preferred to see the proposed article 41 *bis* adopted rather than the Protocol because it saw certain practical advantages in including the right of individual petition in the Covenant itself. That right was already embodied in many State Constitutions and the Covenant, having in other articles safeguarded the rights of States, should now safeguard that right of individuals. However, since it had not been possible to vote on the proposed article 41

*bis*, his delegation would wholeheartedly support the draft Protocol (A/C.3/L.1411/Rev.1) as an appropriate solution and one more acceptable to the majority of the members of the Third Committee. His delegation hoped, however, the draft would be carefully revised.

27. Mr. PAOLINI (France) considered the draft Protocol satisfactory on the whole. However, article 1 should be redrafted in the light of the comments made by the Lebanese and USSR representatives. For example, the first phrase might read "A State Party to the Covenant that becomes a Party to the present Protocol recognizes ...". The USSR representative's criticism of article 2 was valid; his objection might perhaps be met by the insertion of the words "subject to the jurisdiction of a State Party to the present Covenant" after the word "individuals". He doubted that the omission of the word "confidentially" in article 4, paragraph 1, would prove acceptable to those who had wanted more emphasis placed on the confidential nature of the procedure; article 6, not article 4, should be altered. Paragraphs 1 and 2 of article 9 might involve a contradiction. In his view, the Protocol would not empower the human rights committee to act as a judge between States and individuals; but the committee's role could be to express a different point of view from that held by States. The purpose of the communications procedure would be once again to direct a State's attention to a particularly serious matter involving the civil and political rights of an individual: at the request of an individual, the human rights committee would ask that State to reopen the matter even if it had already been considered by the national courts. He could not see how that procedure could infringe the State's sovereignty. He was sure that a suitable formula could be worked out which would satisfy the USSR and Tunisian representatives.

28. Mrs. HENRION (Belgium) supported the French representative's oral amendment to article 1 of the draft Protocol (A/C.3/L.1411/Rev.1) and also supported that representative's suggestion for a change in article 2. She proposed the deletion of the words "who have exhausted all available domestic remedies" in that article and the insertion, between the words "may" and "submit", of a phrase indicating that that provision would apply subject to the provisions of article 5, paragraph 1. Such a formulation would eliminate the redundancies in the existing wording of articles 2 and 5.

29. With regard to the Iraqi representative's queries concerning article 5, paragraph 1, it was her understanding that the intention was to prevent the same question from being submitted at one and the same time to a regional organization and to the committee established under the Covenant. She hoped, however, that the sponsors would explain the exact meaning intended.

30. Mr. SAKSENA (India) said that there should either be international machinery capable of redressing the grievances of individuals, or none at all. His delegation had therefore suggested the drafting of a separate protocol in which such machinery might be elaborated in greater detail and more protection would be given to the individual.

31. The draft before the Committee required substantive changes. He wondered whether the objective of the Protocol was to publicize the actions of States Parties or to provide machinery for redressing the grievances of individuals. In that connexion, he did not approve of the omission of the word "confidentially" from article 4, paragraph 1. He proposed the deletion of article 6, in order to avoid giving publicity to grievances which might be exploited for political propaganda by interested parties.

32. With regard to article 5, paragraph 3 some attempt should be made to satisfy genuine grievances, and a provision should be added to the effect that the human rights committee, after forwarding its suggestions to the State and individual concerned, should ascertain what action had been taken on its suggestions.

33. He supported the amendments to article 2 proposed by the Belgian representative.

34. He did not approve of the wording of the preamble. Indeed, he added that a preamble was not really necessary; with a few introductory words, the protocol could begin directly with article 1. As a precedent for such a formula, he cited the draft protocol on petitions from individuals and non-governmental organizations submitted by the United States delegation at the seventh session of the Commission on Human Rights.<sup>1/</sup>

35. He also drew attention to the title which read: "protocol ... to be annexed to ..." which he found technically wrong since "annexed to" would imply that it was an integral part of the Covenant. After lengthy discussion and a vote, the Committee had already decided to draw up a protocol separate and distinct from the Covenant.

36. Mr. Ronald MACDONALD (Canada) expressed his delegation's disappointment with the course of the Committee's deliberations at the preceding meeting and its full agreement with the French representative's observations in that regard. His delegation also associated itself with the French delegation's view that the Committee's work on the Covenant could not be regarded as finished until the draft Protocol had been completed. His delegation's position in favour of embodying international concern with individual human rights in the Covenant was well known.

37. Now that a protocol had been decided upon, his delegation hoped that it would be adopted by the overwhelming majority of delegations.

38. The text before the Committee was susceptible of amendment as to form but not as to substance. Its provisions remained optional and discretionary; consequently, if it was to have any value at all, the principles laid down in articles 4, 5 and 6 must be retained.

39. Mr. HANABLIA (Tunisia) said that the French representative had been right in suggesting that some delegations would object to the omission of the word "confidentially". His delegation was one of those.

40. He associated himself with the Indian representative's proposal to delete article 6, both in order to avoid any contradiction and as a matter of principle,

since the publication of a report would be a form of sanction and the human rights committee would not be competent to impose sanctions. He also proposed that the word "suggestions", in article 5, paragraph 3, should be replaced by the word "explanations", as that committee would not be competent to make suggestions.

41. He regretted that the sponsors of the draft Protocol had not taken account of other suggestions made at the preceding meeting, and accepted by some of the sponsors of the proposed article 41 bis, in particular with regard to the applicability of the right of individual communication.

42. His delegation would not be able to vote in favour of the draft Protocol in its present form.

43. Mrs. BARISH (Costa Rica) requested that the name of her country be included in the list of sponsors of the draft Protocol. She hoped that that text would be widely supported, so that the Committee might finally achieve its long-sought objectives.

44. Mr. SANON (Upper Volta) said that articles 2 and 5 of the draft Protocol dealt with the right of individual communication from different angles; he was therefore unable to support the Belgian representative's amendments to article 2.

45. In order to avoid lengthy discussion, he asked for a separate vote on the words "which it considers to be an abuse of the right of submission of such communications or to be" in article 3.

46. Like the Indian and Tunisian delegations, his delegation favoured the deletion of article 6.

47. The words "provided the Covenant is also in force at that time" in article 9, paragraph 1, were superfluous, since the Protocol could not enter into force before the Covenant.

48. Mr. KORNYENKO (Ukrainian Soviet Socialist Republic) said that the text of the draft Protocol required extensive amendment.

49. In the first place, it should be termed a separate rather than an annexed protocol; such a formulation would better correspond to its content. Secondly, as the Indian representative had suggested, no preamble was necessary.

50. In article 1, the words "the Covenant and", at the beginning of the first sentence, should be deleted, since the provisions of the article applied only to the signatories of the Protocol. Similarly, the words "to the Covenant and" should be deleted from the last part of the second sentence. It might also be advisable to reword the latter part of the first sentence along the following lines: "... from individuals under its jurisdiction and residing in its territory claiming to be victims ...".

51. He had misgivings regarding the implementation system provided for in the Protocol, and suggested, in particular, that it would be improper for the human rights committee established under the Covenant to examine the communications dealt with in the protocol. A separate committee should be established for that purpose by the States Parties to the protocol. In that connexion, the question arose of financing the system of examination of complaints. At a rough estimate,

<sup>1/</sup> Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 9, annex V.

some 100,000 petitions might be expected annually, and the cost of handling them should be borne by the States concerned and not principally by the United Nations. He requested the Secretary of the Committee to provide a statement of the financial implications of the proposal.

52. Mr. CAINE (Liberia) said that, in his delegation's view, the individual must never be denied the right of complaint when his rights under the Covenant were violated; however the individual must be able to complain to a tribunal with the power and machinery to grant him practical redress. Such meaningful recourse was available to the individual only through national, and never through international agencies. A new article requesting the States Parties to the Covenant

to undertake to bring their domestic legislation into conformity with the provisions of the Covenant would suffice to secure the right of individual petition. His delegation had therefore not favoured the procedure envisaged in the proposed article 41 bis and would have abstained had it been put to the vote. It would not be able to support the draft Protocol (A/C.3/L.1411/Rev.1) since, like article 41 bis, it was not realistic.

53. Mr. QUADRI (Argentina), supported by Mr. SAKSENA (India), moved the adjournment of the debate to permit further consultations concerning the draft Protocol.

*The motion was adopted.*

*The meeting rose at 1.30 p.m.*