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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.3-6, A/C.3/L.1379/REV.1, A/C.3/L.1381 AND ADD.1, A/C.3/L.1389, A/C.3/L.1394-1396, A/C.3/L.1399, A/C.3/L.1402/REV.1 AND REV.1/ADD.1, A/C.3/L.1405)

1. Lady GAITSKELL (United Kingdom), explaining her delegation's vote on article 41 of the draft Covenant on Civil and Political Rights proposed by the Commission on Human Rights (A/6342, annex II.B, parts IV and V) and the various amendments thereto, said that her delegation, which had long advocated mandatory measures of implementation or at least a procedure as strong as that laid down in the International Convention on the Elimination of All Forms of Racial Discrimination, had nevertheless voted in favour of a much weaker draft of articles 40 and 41 than the Commission on Human Rights had proposed. It had done so in the belief that that draft represented the strongest form of implementation that was acceptable to the majority of the Committee, even though it was doubtful that the machinery decided upon would provide really effective protection for the rights set out in the Covenant.

2. Her delegation had voted in favour of the Chilean sub-amendments to article 41 (A/C.3/L.1405) because they employed the word "shall" instead of "may". It had welcomed the United States sub-amendments (A/C.3/L.1391) because they made the text clearer and was particularly gratified by the elimination of the second consent in the amendment to sub-paragraph 1 (b) because it believed that the declaration to be made under article 40 would cover both article 40 and article 41. It had voted against the French oral

sub-amendments. While it had initially thought that those sub-amendments diluted the text of article 41 in document A/C.3/L.1379/Rev.1/Corr.2, on reflection it had come to the conclusion that the phrase "the contents of the report" must include recommendations if conciliation was to be achieved.

3. In conclusion, she felt that the sponsors of document A/C.3/L.1379/Rev.1/Corr.2 need not have been so timid and that their fears were illusory. In her delegation's view, providing for an essentially optional conciliation procedure when the mandatory principle had been rejected was really locking the stable door after the horse had bolted. She shared the Indian representative's hope that the weak articles of the Covenant would make implementation easier for more countries and would thus lead to further progress.

4. Mrs. WILMOT (Ghana) said that her delegation had abstained in the vote on the Chilean sub-amendments because it considered them incompatible with the optional character of article 40. It had voted in favour of the United States sub-amendment to sub-paragraph 1 (a) of article 41 because it thought that the words "prior consent" would preclude any violation of State sovereignty. Her delegation preferred the initiative for the establishment of a conciliation commission to rest with the human rights committee, on the understanding that the consent of the States parties concerned was necessary for the establishment of such a commission. Her delegation had also supported the United States sub-amendment to sub-paragraph 1 (b) because it felt that that sub-paragraph should include a safeguard to ensure that the human rights committee's work on a matter submitted to it would not be frustrated by consistent failure of the parties to come to an agreement on the membership of the commission. Her delegation had also been able to vote in favour of the new paragraph proposed by the United States to replace paragraphs 7 and 8 after the deletion of the last sentence of the new paragraph. Finally, her delegation had voted in favour of the French oral sub-amendments because they were more in line with her delegation's concept of the role of the conciliation commission.

5. Mr. KORNYENKO (Ukrainian Soviet Socialist Republic) pointed out to the United Kingdom representative that the interpretation given by the sponsors of document A/C.3/L.1379/Rev.1/Corr.2 in accepting the French oral sub-amendments to paragraphs 7 and 8 of their text of article 41 had been that the contents of the conciliation commission's report would specifically exclude recommendations. There was nothing in the adopted text of that article to indicate that the conciliation commission had the power to make recommendations.

6. The CHAIRMAN informed the Committee that the amendments in documents A/C.3/L.1355, A/C.3/L.1389 and A/C.3/L.1394 regarding the insertion of a new article 41 *bis* had been withdrawn by their respective sponsors. She invited members to consider a revised text of article 41 *bis* proposed in documents A/C.3/L.1402/Rev.1 and Rev.1/Add.1.

7. Mr. MIRZA (Pakistan) suggested, on behalf of the sponsors of the revised text, that discussion of it should be postponed pending further consultations.

*It was so agreed.*

8. Mr. SAKSENA (India) introducing the amendment to article 42 on behalf of the sponsors of document A/C.3/L.1379/Rev.1, said that, since the Committee had already adopted the text of article 42 as proposed by the Commission on Human Rights as paragraph 1, sub-paragraph (f), of article 40, the sponsors were proposing its deletion.

*The proposal in document A/C.3/L.1379/Rev.1 to delete article 42 was adopted unanimously.*

9. Mr. SAKSENA (India), speaking on behalf of the sponsors of document A/C.3/L.1379/Rev.1, said that, since the Committee had already decided on a different type of body, which would have functions different from those proposed by the Commission on Human Rights in article 43, he would propose the deletion of that article.

*The proposal in document A/C.3/L.1379/Rev.1 to delete article 43 was adopted by 76 votes to none, with 1 abstention.*

10. Lady GAITSKELL (United Kingdom) suggested that, since the new article to be inserted between articles 43 and 44 proposed by her delegation in its amendments (A/C.3/L.1356/Rev.1) was concerned with the functions of the human rights committee, it should be discussed only after the Committee had completed its consideration of all other articles relating to that committee's functions.

*It was so agreed.*

11. Mr. FINK (Denmark), introducing the amendment in document A/C.3/L.1399 on behalf of the sponsors said that that amendment was a combination of the amendments in documents A/C.3/L.1396 and A/C.3/L.1395, which had been withdrawn. The new article 43 *ter* (A/C.3/L.1399) was based on article 16 of the International Convention on the Elimination of All Forms of Racial Discrimination. It was being submitted because the sponsors considered it necessary to avoid the possibility of conflict between the implementation provisions of the present Covenant and the implementation procedures prescribed in other international instruments, since it was neither reasonable nor appropriate that the same matter should be dealt with simultaneously by different international organs. The proposed article 50 in the present draft Covenant would not suffice to eliminate the possibility of conflict because its provisions were general, whereas the proposed new article in paragraph 1 referred to procedures for dealing with State-to-State communications and concerned not only the relationship of the Covenant to the constituent instruments of the United Nations and the specialized agencies, but also its relationship to procedure established under other conventions adopted by any member of the United

Nations family and under international instruments of a regional character.

12. Paragraph 2 specified the limitations on procedures for State-to-State and individual communications that would apply when the other procedures he had mentioned had been invoked.

13. While it was unlikely that the competence of two organs would often overlap, when that situation occurred, his delegation would expect that the other organ, and not the human rights committee, would deal with the matter because it would be able to initiate a conciliation or settlement procedure on the basis of an instrument of a more comprehensive and detailed character than the present Covenant. For example, in the event of a disagreement on a question of racial discrimination between two States parties to the Covenant and to the International Convention on the Elimination of All Forms of Racial Discrimination, the matter should be settled under the Convention because its provisions were far more detailed and specific. If, on the other hand, one of the States involved in the disagreement was a party to only one of those instruments, only the procedures laid down by that instrument would be applicable.

14. The blank space in paragraph 2 should be filled in by the following: "40, 41 and 41 *bis*", subject to the adoption of the last-mentioned article.

15. Mr. A. A. MOHAMMED (Nigeria) said that his delegation could support the proposed new article. He wondered, however, whether the human rights committee would always be informed if a matter affecting the Covenant was being handled under the provisions of another instrument.

16. Mrs. AFNAN (Iraq) said that the Covenant should have authority over the whole field of human rights and its implementation procedures should be neither fragmented nor made subject to the procedures prescribed in the field of human rights by the constituent instruments and the conventions of the United Nations and of the specialized agencies or by any other general or special international agreement to which a State might be a party. The procedures of the specialized agencies had been designed to meet their particular needs. The Constitution of the ILO, for example, was adequate for the kind of rights with which that organization was concerned and its structure reflected the tripartite nature of the ILO's activities, but the Covenant dealt with civil and political rights *in toto*. The Covenant required Governments to report on the progress they had made in implementing those rights, but there was no corresponding obligation on the Governments members of the ILO. The procedures laid down under the Covenant were entirely different from human rights procedures followed in other contexts, yet the first sentence of paragraph 1 clearly subordinated them to the procedures of the United Nations and the specialized agencies.

17. It appeared that, under paragraph 2 of the proposed new article, the human rights committee would have to ask permission of all the specialized agencies before it could take action. Consequently, it would do nothing at all. She was surprised that those delegations which desired a strong Covenant were willing to dictate to Governments but not to the specialized agencies. It

was unthinkable that the implementation machinery set up under the Covenant should be subordinated to the wide variety of constitutions and procedures of the specialized agencies. Her delegation would vote against the new article proposed in document A/C.3/L.1399.

18. Mr. MIRZA (Pakistan) said that he shared the misgivings of the Iraqi representative and found the present move to weaken the human rights committee surprising. Paragraph 2 of the proposed new article was unacceptable because it would subordinate the human rights committee, a creation of the United Nations General Assembly, to the specialized agencies and other organizations. He requested that paragraph 2 of the proposed new article should be voted on separately.

19. Mr. LUKYANOVICH (Byelorussian Soviet Socialist Republic) asked the sponsors whether the proposed new article meant that the provisions of the Covenant would be subordinated to the provisions of other instruments, including the constituent instruments of the specialized agencies.

20. Mr. PAOLINI (France) said that the purpose of the proposed article 43 ter was to establish a simple rule in order to avoid conflicts of jurisdiction. It should be clearly understood, in the first place, that the Covenant's reporting system was not affected; the article related only to the communications procedure and to a petitions system if adopted. Secondly, the rule would apply only where States were parties to the Covenant and to other applicable international instruments. The rule ensured that in the implementation of the Covenant account was taken of the competence of other existing organizations and bodies, including regional ones. Essentially the same provision had been incorporated in the International Convention on the Elimination of All Forms of Racial Discrimination (article 16), and the two situations were basically similar.

21. In reply to the Byelorussian representative he said that there was no hierarchy or difference of degree. The difference was in the nature of the Covenant and the other instruments, the latter being more detailed. The issue did not arise in connexion with the other draft Covenant because that instrument provided only for reporting. There was a similarity between the proposed rule at the international level and the rule which had been adopted in connexion with remedies at the national level. If there was an available local remedy, it should be used and exhausted; in the case of the international rule any specialized remedy should be resorted to first. The Covenant was universal in its coverage and its implementation machinery should come into play only where no more specific applicable instruments existed.

22. Mr. MIRZA (Pakistan) said that there was a notable difference between article 16 of the International Convention referred to and the proposed new article. Article 16 said that the provisions of the Convention "shall not prevent the States Parties from having recourse to other procedures..."; such recourse could therefore be additional or subsequent. Under the proposed new article, however, the recourse to other procedures would preclude recourse to the committee. If, as the French representative had said, the principle was similar to that of local remedies,

then paragraph 2 of the proposed new article should provide that the committee should take no action pending the settlement of the matter in accordance with the procedures referred to in paragraph 1. Then, if the matter was not settled under other international agreements or constituent instruments, the human rights committee, as a higher authority, could be seized of it. In that manner the committee would not be subordinated to other bodies.

23. Mr. GROS ESPIELL (Uruguay) said that the new article proposed in document A/C.3/L.1399 would tend to place the human rights committee established under the Covenant in a position of subordination to the procedures established under other instruments. If the sponsors simply intended to provide that the implementation of the Covenant should take place without prejudice to other procedures for the protection of human rights, then that should be made clear. In that event, and on the basis of the French representative's explanation, his delegation would be able to vote in favour of the proposed new article; otherwise, it would be obliged to abstain.

24. Mr. SAKSENA (India) said that, although other conventions existed for the protection of various aspects of human rights, the Covenant on Civil and Political Rights was intended to be all-embracing and should not, therefore, be regarded as potentially conflicting with or subordinate to such other instruments. In article 21 of the draft Covenant there was reference to the International Labour Organisation Convention on Freedom of Association and Protection of the Right to Organize, article 39 bis provided for the transmission of reports to the specialized agencies and there was a further reference to the specialized agencies in article 50. The proposed text (A/C.3/L.1399), modified along the lines of article 16 of the International Convention for the Elimination of All Forms of Racial Discrimination, might be added to article 50; it could not properly be inserted in the draft Covenant as an independent article 43 ter.

25. Paragraph 2 of the proposed text was, in his view, particularly unsatisfactory. He hoped that the sponsors might revise their text, taking into account the objections to it which had been expressed.

26. Mr. HANABLIA (Tunisia) said that his delegation had no objection to the first part of paragraph 1 of the proposed article 43 ter (A/C.3/L.1399). It had difficulty, however, with the phrase beginning "or by any other general or special international agreement". Some conventions were much more restrictive than the Covenant under discussion, and States might therefore find themselves bound by narrower procedures.

27. With regard to paragraph 2 of the proposed article 43 ter, it was difficult to reconcile that provision with article 40, sub-paragraph 1 (c), of the Covenant, under which all domestic remedies had to have been invoked and exhausted before the human rights committee could deal with a matter referred to it. He asked the sponsors to explain that contradiction.

28. Mr. ABOUL NASR (United Arab Republic) shared the misgivings voiced by other representatives concerning the proposed new article. The main objection was that it would give priority to the procedures

of the specialized agencies and various regional bodies. In his view, article 50 of the draft Covenant provided sufficient guarantees for the specialized agencies and other institutions. If the aim of the sponsors of the proposal was to strengthen the Covenant, their amendment (A/C.3/L.1399) did not serve that purpose.

29. In connexion with paragraph 2 of the proposed new articles, he asked the sponsors whether the discussion of a matter under a regional or other convention for the protection of human rights would exclude the competence of the human rights committee set up under the Covenant.

30. Miss TABBARA (Lebanon) agreed with the Tunisian representative's remarks concerning the final part of paragraph 1, which appeared to limit the effectiveness of the Covenant. Paragraph 2 was altogether unacceptable. It would be preferable to adopt an article on the lines of articles 16 of the International Convention on the Elimination of All Forms of Racial Discrimination.

31. Mr. HELDAL (Norway) said that the French representative had clearly explained the need for an article of the type proposed in document A/C.3/L.1399. He could see no reason why the article should diminish the importance of the human rights committee set up under the Covenant. With regard to the suggestion that a modified text of the article should be appended to article 50, he pointed out that that article referred only to the provisions of the Charter of the United Nations and the constitutions of the specialized agencies. It took no account of procedures established under United Nations conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination. With regard to the reference in the Covenant to the International Labour Organisation Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87), he recalled that since the adoption of the substantive articles of the Covenant in 1954, the ILO had adopted a number of other conventions, such as the Convention concerning Discrimination in Respect of Employment and Occupation (No. 111) and the Convention concerning the Abolition of Forced Labour (No. 105). The proposed article 43 ter would cover the procedures established under those conventions as well as under various regional arrangements for the protection of human rights.

32. Mr. NAÑAGAS (Philippines) felt that the proposed article (A/C.3/L.1399) reflected the view that the human rights committee did not possess plenary competence to deal with questions of human rights. Such competence should be clearly established. With regard to paragraph 2 of the article, he suggested the addition to it of a provision to the effect that the human rights committee should take no action under the specified articles while a matter was being actively dealt with under the procedures mentioned in paragraph 1.

33. Mr. ABDEL RAHMAN (International Labour Organisation) said that the question before the Committee was not one of the superiority of one international instrument over another but simply of a

division of labour. The proposed article (A/C.3/L.1399) stemmed from the substantive articles of the Covenant, the language of which was general and comprehensive. Article 3 of the Covenant, for example, clearly brought into play the ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100). Similarly, article 8, sub-paragraph 3 (a), related to ILO Convention No. 105, adopted in 1957 and ratified by the majority of States Members of the United Nations. Article 21 of the Covenant, which referred specifically to trade unions, obviously involved the ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (No. 98), as well as ILO Convention No. 87. Since the Third Committee obviously could not specify all the different conventions concerned, the only solution was to adopt the article proposed in document A/C.3/L.1399.

34. With regard to the suggestion that the substance of the new article should be added to article 50, he pointed out that that article was simply a standard provision which did not deal with implementation procedures at all, and was not even included in the section on implementation. The proposed article 43 ter was needed to ensure a concerted and co-ordinated implementation system within the United Nations family of organizations.

35. Mrs. AFNAN (Iraq) was not convinced by the arguments of the sponsors of article 43 ter. With regard to article 21, which had been mentioned, she wished to point out that it had been introduced in the draft text, against the opposition of many delegations, by delegations holding views similar to those of the sponsors of article 43 ter. When article 21 had been adopted there had been only one relevant convention of the International Labour Organisation. Since then, many others had been adopted and, by the time the Covenant came into effect, still more might have been concluded. Under the proposed article 43 ter, the provisions of all those instruments would supersede those of the Covenant. It was common knowledge, moreover, that, under one regional arrangement, a matter had been pending for two or three years; the question therefore arose whether, under the proposed article, the human rights committee would have to wait, before taking up a matter, to ascertain when that matter was no longer pending. There was an anomaly in the circumstance that a human rights committee established by sovereign States under an international Covenant should find itself in fact subordinated to the procedures of instruments established by specialized agencies or regional groups.

36. She urged the sponsors not to repeat the mistake which had been made by the adoption of article 21, and to withdraw their amendment (A/C.3/L.1399).

37. Mr. HOVEYDA (Iran) agreed with the remarks of the representative of Iraq. It was paradoxical that the proposal for article 43 ter should have come precisely from those delegations which had sought to strengthen the proposed human rights committee. Adoption of the article would simply cut the ground from under that committee's feet. It was clear that, if other international instruments were adopted in the

area of human rights, paragraph 2 of the article would deprive the committee of all utility.

38. He wished to remind the sponsors that, where human rights were involved, the end rather than the means was the most important consideration. The more remedies were available, the better. If States preferred to take a matter before the committee set up under the Covenant, they must be at liberty to do so.

39. He joined the representative of Iraq in asking the sponsors to withdraw their text. If they did not withdraw it, his delegation would abstain in the vote upon it; it would not cast a negative vote because it would not wish such a vote to be construed as reflecting hostility to any particular agency or organization.

40. Mr. BEEBY (New Zealand) requested a suspension of the meeting to permit consultations concerning document A/C.3/L.1399.

*The meeting was suspended at 5 p.m. and resumed at 5.50 p.m.*

41. Mr. BEEBY (New Zealand) announced the following revisions of the proposed article 43 ter. In paragraph 1, as a drafting improvement, the words "or under" were to be added between "by" and "the constituent instruments". In response to the suggestions that the wording of article 16 of the International Convention was better, the entire last part of paragraph 1, beginning with the words "or by any other..." was to be replaced by "and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them", words taken directly from article 16. He pointed out that "dispute" in that case did not refer to matters dealt with under the procedures of the Covenant but to disputes under other general or special international agreements in force between the parties concerned.

42. In paragraph 2, to meet the point that the human rights committee should not be prevented from dealing with a matter where another procedure which had been invoked had been unsuccessful—a point with which the sponsors fully agreed—the words "and the matter is still pending with regard to those procedures" should be added at the end of the paragraph.

43. Mrs. AFNAN (Iraq) pointed out, in connexion with the words "the matter is still pending", that an initial period of confidential State-to-State communications

was provided for under the draft Covenant, the European Convention on Human Rights and Fundamental Freedoms and the ILO system. During that period it would be impossible to know whether a matter was pending or not.

44. Mr. HOVEYDA (Iran) said that the revisions seemed to have made the proposal worse, and his delegation would have to oppose it. Paragraph 1 had now become an inconsistent mixture of ideas and paragraph 2 had become even more obscure. If article 16 of the International Convention on the Elimination of All Forms of Racial Discrimination was preferable, it should be borrowed intact.

45. Mr. KORNENKO (Ukrainian Soviet Socialist Republic) said that he too found the revised version even less acceptable than the original. He suggested that the meeting should be adjourned and the revised text submitted in writing.

46. Mr. RICHARDSON (Jamaica) said that before adjournment he wished to raise a question of procedure. His delegation desired to submit an amendment proposing a new article for inclusion in the draft Covenant. He had been told by the Chairman that she thought it would be unfair to other delegations whose proposed amendments she had not admitted after the time-limit to admit an amendment by the Jamaican delegation. He simply wished to inform the Committee that the new article his delegation sought permission to submit was a self-contained clause not likely to affect other provisions. Moreover, if it appeared that its consideration would unduly prolong the Committee's deliberations, he would withdraw it.

47. The CHAIRMAN asked whether the Committee wished to authorize the submission of the amendment.

48. Mrs. HARRIS (United States of America) said that time-limits were intended to facilitate the Committee's work and not to prevent the consideration of matters which deserved the Committee's attention. She supported the amendment's submission.

49. The CHAIRMAN said that if there was no objection she would take it that the Committee decided to approve submission of the amendment in question.

*It was so decided.*<sup>1/</sup>

*The meeting rose at 6.20 p.m.*

<sup>1/</sup> The amendment was subsequently circulated as document A/C.3/L.1407.