



CONTENTS

	Page
<i>Agenda item 62:</i>	
<i>Draft International Covenants on Human Rights (continued)</i>	
<i>Articles on measures of implementation of the draft Covenant on Civil and Political Rights (continued)</i>	219

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.1334, A/C.3/L.1355, A/C.3/L.1356/REV.1, A/C.3/L.1373 AND ADD.1, A/C.3/L.1379-1381)

1. Mr. Ronald MACDONALD (Canada) said that because the draft Covenant on Civil and Political Rights was vital to the total United Nations effort to ensure observance of human rights, it should have effective and efficient measures of implementation, including reporting, conciliation and petitions procedures, the last two to be on an optional basis. Experience had shown that it was not enough to leave compliance to the States parties themselves on a purely national basis; there must be a measure of accountability to the international community and some form of international supervision.
2. The reporting system was not only a source of information but also a valuable incentive to Governments to improve their human rights programmes. The cumulative effect of the reports and the recommendations made would be to encourage compliance. Reporting, therefore, was a useful and necessary first stage in the international control mechanism, and would be particularly valuable when sophisticated techniques could be developed for collecting, sifting and commenting on the data obtained. While his delegation favoured a compulsory reporting system which would produce meaningful and extensive data, it nevertheless regarded reporting as a preliminary technique of limited value, since Governments tended to make their reports too rosy.
3. The complaints procedure carried control one step further by providing that a State party might, in

certain circumstances and on a strictly optional basis, refer particular complaints to a human rights committee, which would then ascertain the facts and tender its good offices to the States concerned. That procedure was predicated on the belief that the States parties would avail themselves of the opportunity to initiate proceedings before the committee and gave them an additional possibility of securing compliance with the Covenant. To that extent, it was to be welcomed. The major difficulty, however, was that it might not be used as often as it could be since friends did not like to tangle in public, while rivals were only too frequently tempted to do so. However, since the procedure would be optional, it was not likely to heighten international tensions.

4. The recognition of the right of petition, under which individuals or certain selected non-governmental organizations might bring alleged violations to the attention of the human rights committee, was the most mature aspect of the control mechanism yet proposed. The principle involved had been recognized by the Third Committee in the International Convention on the Elimination of All Forms of Racial Discrimination. It also formed the basis of the Costa Rican proposal for the creation of a United Nations High Commissioner for Human Rights, ^{1/} regarding which Canada had been a co-sponsor of resolution 2062 (XX). That principle also formed the basis of the Netherlands amendments in document A/C.3/L.1355. Those proposals represented a middle course between the routine mechanisms of reporting and conciliation and the innovation of a compulsory system of petitions and were therefore a step in the right direction. States could not, of course, be compelled to recognize the competence of an international committee to receive individual petitions and that was why the Netherlands amendments had made that point optional. In his delegation's view, it was extremely important for the cause of human rights that many States should accept the wisdom of the petitions procedure on an optional basis and bring it into force as quickly as possible. His delegation would support the Netherlands amendments as it had supported the corresponding provision in the International Convention on the Elimination of All Forms of Racial Discrimination.

5. His delegation supported virtually all the amendments in documents A/C.3/L.1373 and Add.1, which clarified and strengthened the articles proposed by the Commission on Human Rights (A/6342, annex II.B, part IV), in particular article 27 concerning the establishment of a human rights committee.

^{1/} Official Records of the General Assembly, Twentieth Session, agenda item 98, document A/5963.

6. The amendments in document A/C.3/L.1379 made the complaints procedure optional, made no reference to a petitions procedure, and omitted all reference to the International Court of Justice. While his delegation would have preferred a stronger complaints procedure, it could accept those amendments in principle as a fair and reasonable compromise and hoped that its sponsors would be able to incorporate the Netherlands amendments in their text.

7. It had been said that the implementation systems of the two Covenants should be identical, that nothing more than reporting was needed, and that the Covenant on Civil and Political Rights did not require its own control system. Those taking that view appeared to suggest that compulsory reporting to the Economic and Social Council was sufficient and that any other view implied distrust of the Council. His delegation was unable to accept those arguments because they would produce an ineffective and clearly inefficient system. Since the General Assembly had, in 1951, decided that the two classes of rights were fundamentally different in nature, a decision which could not be reopened, the two classes of rights clearly required different systems of implementation. His delegation considered the control mechanism envisaged in the draft prepared by the Commission on Human Rights, and in the Afro-Asian amendments (A/C.3/L.1379) an entirely appropriate one. It thought that the complaints procedure presented more advantages than dangers to smaller States. The arguments based on the undesirability of a proliferation of United Nations bodies on the financial implications of the proposal and on infringement of the powers and functions of the Economic and Social Council were not persuasive. The elimination of the human rights committee would weaken the Covenant and those who proposed it seemed to have overlooked the optional nature of the Afro-Asian amendments.

8. Mr. KORNENKO (Ukrainian Soviet Socialist Republic) said that the measures of implementation of the Covenant on Civil and Political Rights should be squarely based on the principles of the Charter of the United Nations, in particular the principles of non-intervention in the domestic affairs of States laid down in Article 2, paragraph 7. It should be borne in mind that it was the States parties themselves which would have to implement the substantive articles of the Covenant because the observance of human rights was a domestic concern. The history of international relations showed that the attempts made by some countries to control the actions of others had caused relations between them to deteriorate. His delegation therefore considered that the measures of implementation of the Covenant should take due account of the principle of non-intervention. The scheme already sanctioned by United Nations practice was the reporting system, which was entirely in accord with the principles of the Charter. Any other system would introduce complications into the measures of implementation and ultimately yield negative results.

9. His delegation saw no need to establish a new special committee to consider the reports submitted. In the case of the Covenant on Economic, Social and Cultural Rights, that function had very properly been

entrusted to the Economic and Social Council. There were many other United Nations bodies concerned with human rights matters and it would therefore be unwise to set up an additional organ since that would result in duplication of functions. Operation of the system would scarcely be facilitated by the fact that some States would not accept the compulsory jurisdiction of a committee such as the one proposed. Moreover, the committee, being smaller than the Economic and Social Council, could hardly be as representative and might well act in the same way as the International Court of Justice, which it would somewhat resemble. The establishment of such a committee would place an unnecessary and unjustifiable financial burden on the United Nations and its Member States. In that connexion he would welcome a statement of the financial implications of the proposal to set up such a committee.^{2/}

10. Even more dangerous was the proposal to include in the Covenant provision for complaints by one State against another. With such a procedure, even the smallest issue might give rise to interference in the domestic affairs of States and lead to a deterioration of international relations, or worse. The human rights reporting system had already been used to interfere in the domestic affairs of sovereign States. A further point to be borne in mind was that the proposed committee might include a non-member State.

11. In his view, the measures of implementation of the Covenant on Civil and Political Rights should be realistic in terms of the prevailing international situation and acceptable to the majority of States, and should strengthen international relations. The Third Committee would do well to use the system it had already developed for the Covenant on Economic, Social and Cultural Rights. Its work could thus be expedited and the conclusion of both Covenants at the present session could be ensured. Such a course would not have the effect of setting up two categories of human rights of differing importance, would avoid unnecessary expenditure, and would foster better relations between States. He therefore suggested that the present article 27 of the draft Covenant should be replaced by a text similar to article 17 of the draft Covenant on Economic, Social and Cultural Rights.

12. Mr. GUEYE (Senegal) said that those who had drawn up the amendments in documents A/C.3/L.1373 and Add.1 and A/C.3/L.1379 at the request of the Afro-Asian group of countries had been guided by two main considerations: that the measures of implementation of the two Covenants should be similar, although not identical, and that the proposed committee should in no way be related to the International Court of Justice. They had therefore proposed that the committee referred to in the present draft of article 27 should be able to study the reports and complaints submitted by States only on the condition that the States in question recognized its competence in a valid statement addressed to the Secretary-General of the United Nations. In that way States would not involuntarily be subject to any constraint or outside interference on the part of the committee. The amendments submitted represented the consensus of the

^{2/} Subsequently circulated as document A/C.3/L.1382.

Afro-Asian group but not necessarily the views of each of its members.

13. Speaking as the representative of Senegal, he said that his country was opposed to any national or international committee which would duplicate the functions of national juridical bodies, enable other States to meddle in its domestic affairs and endanger its economic and political development. His country's Constitution guaranteed all human rights and its courts were fully empowered to receive complaints and propose solutions to them. Senegal did not wish a committee with supra-national powers to be used by men of straw with the complicity of foreign elements to disturb the course of its economic and political development during the present critical period. It could therefore support the proposed committee only if its competence to receive complaints rested on an entirely optional basis.

14. Mr. GROS ESPIELL (Uruguay) said that without an adequate protection system, the Covenants would be no more than an undertaking by States to respect a set of human rights, most of which were already implicitly or explicitly proclaimed in the Charter and the Universal Declaration of Human Rights. His delegation still favoured the idea of providing for a High Commissioner for Human Rights; it would not press that proposal at present, but hoped that it might be adopted later, perhaps in the form of a supplementary protocol.

15. His delegation did not support the suggestion that the measures of implementation of the draft Covenant on Civil and Political Rights should be identical with those adopted for the draft Covenant on Economic, Social and Cultural Rights. While there were similarities between the two instruments, the differences between them appeared to justify the establishment of different systems of implementation. In his delegation's view, the system adopted for the Covenant on Economic, Social and Cultural Rights was overly simple and imprecise. It had nevertheless supported that system, however, in order not to delay the final approval of the Covenants. The objective of the Covenant on Economic, Social and Cultural Rights was that the State should take positive action to satisfy the economic, social and cultural rights of the individual whereas the objective of the other Covenant was that the State should avoid certain action; specifically, action which would violate the attributes of the person as an autonomous, rational and free human being. A control mechanism was therefore needed in the latter case; the possibility of action by the State in violation of a civil or political right recognized by the Covenant, in other words, of action contrary to positive international law, required the establishment of a system of international protection.

16. The progress of international law was directly related to the recognition that the human person, like the State, was the subject of international law, and that effective respect of his rights was an important contribution to world peace. Proclamation of human rights was no longer enough; what was needed was an international system to protect those rights in case of their violation. Such a system could not be regarded as violating the principles of national sovereignty or

non-intervention in the internal affairs of States, since it would have been agreed upon by the States parties to the Covenant. In that connexion, the precedent created by the human rights conventions adopted in Europe and in the Americas was of particular importance. The very universality of human rights required the establishment of an effective and not merely declaratory system of international protection. For those reasons his delegation would support the system proposed by the Commission on Human Rights.

17. With regard to the amendments which had been submitted, his delegation found those in documents A/C.3/L.1373 and Add.1 generally acceptable; without changing the essence of the draft Covenant, they improved some of its provisions and brought them up to date. It was unable to support the amendments in document A/C.3/L.1379, since they would unduly limit the competence of the proposed committee on human rights, and would in fact prevent the establishment of an immediate and effective control system. The Netherlands amendments (A/C.3/L.1355) significantly improved the draft text and would have his delegation's support. The second amendment of the Netherlands, which concerned article 41, made the procedure more precise. In connexion with the new article proposed in the third Netherlands amendment, he drew attention to the fact that article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms contained a similar provision.

18. Mr. PAOLINI (France) said that the essential question was the extent to which the standards laid down in the Covenant would have binding force. If there were no measures of implementation providing for effective control, the instrument would have no real meaning; it would be little more than a reiteration of the Universal Declaration of Human Rights.

19. The international situation had evolved considerably since 1953-1954 when the Commission on Human Rights had drafted the text of the Covenant which was now before the Committee. The cold war had subsided and many countries had acceded to independence. France was conscious of the problems of the newly independent countries, and realized that the obligations of the Covenant would be more burdensome for them than for the older countries. It realized, too, that they were naturally jealous of their sovereignty and also more vulnerable. He agreed with the representative of Saudi Arabia that the Committee must avoid creating an instrument of international control which would imply too great an abandonment of sovereignty and which might serve as an instrument of war if it could be used to intervene in the internal affairs of a State.

20. He wished to thank the sponsors of the amendments in documents A/C.3/L.1373 and Add.1 for their valuable contribution to the work of the Committee. His delegation would support those amendments, but with certain reservations; in particular, it considered that the powers given to the committee on human rights were in certain cases too extensive.

21. The analogy which had often been made between the International Convention on the Elimination of All Forms of Racial Discrimination and the draft Covenants on Human Rights should not be carried too far. In the case of the former instrument, it had been

possible, for both moral and legal reasons, to establish a very comprehensive complaints procedure. Such a system was too stringent, however, for the Covenant on Civil and Political Rights. Moreover, there would be other corrections on human rights, and they could not all be patterned on the International Convention: they would have to be adapted to the particular rights they dealt with.

22. He agreed with the Uruguayan representative on the need for an effective and compulsory system of international protection; to accept an optional system would be to recognize as futile international efforts over a period of nearly twenty years to establish binding norms, and would sanction situations contrary to the principles set out in the Universal Declaration of Human Rights and in the Charter.

23. Furthermore, the adoption of an optional clause would lead to the combination of two systems—a system of rigorous control and a system of no control. Since the fundamental objective of the Committee was to draw up provisions acceptable to the majority of States, the competence of the proposed committee on human rights should be mandatory and at the same time less extensive than was proposed by the Commission on Human Rights. He wished to suggest a compromise solution. First, with regard to the procedure for reports, the Committee might agree that such reports should be submitted to the Economic and Social Council, as suggested by the Commission, and forwarded to the committee on human rights for information. Secondly, with regard to the system of communications—the objective should be to permit control by States parties of the implementation of the Covenant. It was not a complaints procedure or a true procedure for the conciliation of disputes. The proposed committee would not be required to investigate violations, and would transmit general and confidential recommendations to the States concerned, as suggested by the sponsors of document A/C.3/L.1379, rather than report to the United Nations. Thirdly, with regard to the right of individuals to make allegations, that right should be regarded as a parallel of the right of States to send communications to other States. It would not be a right of petition as such. The committee would have no investigatory powers, but would take note of such allegations, and of replies from Governments. All such proceedings would be written and confidential.

24. That system of implementation would provide the minimum degree of constraint acceptable to States. Later, depending on the international climate, it might be possible to increase the powers of the committee on human rights and to achieve greater international control. Another advantage of such a system was that it could be extended to the Covenant on Economic, Social and Cultural Rights.

25. Lady GAITSKELL (United Kingdom) noted with regret that the implementation clauses of the draft Covenant on Civil and Political Rights did not seem as generally acceptable as had been the corresponding articles of the Covenant on Economic, Social and Cultural Rights. All delegations had stressed the vital importance and seriousness of the two instruments; her delegation believed that the effectiveness of the Covenants would lie in the strength of their implementation clauses and that in each Covenant those

clauses should be appropriate to the particular type of rights the instrument was designed to promote and safeguard. The different nature of the two sets of rights had been widely recognized in the Committee, most recently by the sponsors of the amendments in document A/C.3/L.1379, who had retained the concept of a human rights committee. She had accordingly been disappointed to hear others state that there should be no difference in approach to the two Covenants and that, because it had been deemed unnecessary to establish a committee under the Covenant on Economic, Social and Cultural Rights, there was no need for one under the present Covenant.

26. Economic and social rights were already the concern of various specialized agencies and her delegation had therefore considered a special committee unnecessary under the Covenant on Economic, Social and Cultural Rights. However, the decision not to provide for a committee in that case had no relevance to the case of the Covenant on Civil and Political Rights. The rights under that Covenant differed from those set forth in the other because they were almost all capable of immediate, and not merely progressive, realization. There was no practical or moral reason why rights such as those to life, liberty and security of the person, to impartial trial, to freedom of movement and to freedom of thought and expression should not be accorded.

27. The fact that many civil and political rights were enshrined in constitutions did not mean that they were also universally observed. It was for that reason that an effective Covenant was necessary. Developments since the adoption of the Universal Declaration of Human Rights had shown that, despite that document's moral force, it had not been sufficient to secure full observance of human rights. Her Government hoped that the Covenant on Civil and Political Rights would prove self-executing in practice, but it could not agree with the view that a complaints procedure was unnecessary or a violation of Article 2, paragraph 7, of the Charter. It regarded the possibility of a complaint by one State against another as essential to the effectiveness of the Covenant. Furthermore, as had already been pointed out, a matter which was subject to and governed by an international agreement was thereby removed from the category of "matters which are essentially within the domestic jurisdiction of any State". If the Committee failed to be realistic about the implementation measures for the Covenant on Civil and Political Rights, the instrument would mark no advance upon the Universal Declaration.

28. Her delegation strongly supported the establishment of a human rights committee as proposed in the draft Covenant. It also believed that all States parties should accept the complaints procedures and that it should not be of an optional nature as had been suggested by the sponsors of the amendments in document A/C.3/L.1379. The International Convention on the Elimination of All Forms of Racial Discrimination adopted in 1965 had provided for an obligatory procedure and failure to provide for one in the present instance would be a retrograde step as far as the promotion of human rights in the international community was concerned. At the 1373rd meeting of the Committee, the Polish representative had said that

the adoption of the International Convention "marked a new stage" in the history of United Nations work for the protection of human rights, and that that instrument "established a system of control and implementation which could serve as a precedent for the drafting of further conventions and for the settlement of international disputes in general". She shared that view and hoped it was shared by all delegations.

29. The USSR representative had seen great dangers in the proposal to set up a human rights committee and had suggested that such a committee would increase international tension. She saw, rather, another danger—the danger that the Covenant might become mere empty words if it lacked provisions adequate to promote and safeguard the rights involved. Some of the fears which the USSR representative had voiced concerning the proposed human rights committee appeared to have spread to other delegations and perhaps even to the sponsors of the amendments in document A/C.3/L.1379. Her delegation did not share those fears. It did not believe that Governments would use the proposed committee for political purposes. Some speakers had referred to the State-to-State complaints procedures of the International Labour Organisation and the European Convention for the Protection of Human Rights and Fundamental Freedoms and had argued that, because those procedures were so rarely used, they were useless or irrelevant. Her delegation took the exact opposite view; the infrequency of complaints demonstrated the responsible attitude taken towards the procedure and its value; the procedure's very existence was a deterrent, serving to encourage a Government to remedy more quickly any abuse of human rights within its territory. She hoped that delegations would cast aside unwarranted fears, have the courage of their convictions and show some faith in the international community.

30. She regretted that the sponsors of the amendments in document A/C.3/L.1379 had made the complaints procedure optional. Their other proposals, however, were interesting and useful. They had suggested, for example, that when no solution to a State-to-State complaint had been found in the human rights committee, the matter should be entrusted to an *ad hoc* conciliation commission. She too believed that a satisfactory solution to a dispute was more likely to be reached if all the members of the body dealing with it had been appointed with the agreement of the parties to the dispute.

31. With reference to the Saudi Arabian proposal (A/C.3/L.1334), she agreed that it was desirable that all practical measures to redress a violation of human rights should be taken at the national level before it came before the human rights committee. However, it might not be possible for all parties to the Covenant to follow the same pattern of national action and for each to establish a "national committee". Consideration of such a matter by her country's Parliament would be required. Her Government, moreover, had recently decided to appoint an *ombudsman* who would further safeguard the rights of the individual. The idea of a national committee might have great appeal and value for some countries, but it did not seem appropriate, in an international instrument such as the

Covenant, to oblige all parties to set up national machinery of a particular kind.

32. Concerning the Netherlands proposals (A/C.3/L.1355), she shared the sponsor's view that if a State failed to fulfil its duty of protecting the rights of its citizens, the international community could have a responsibility in the matter, and that States might be reluctant to take up a case on behalf of individuals in other States because of the political implications. She considered it appropriate therefore that the Covenant should contain an optional provision for the human rights committee to receive complaints from individuals. Her Government had recently, after due consideration, accepted the optional provisions for individual petition under the European Convention and would hope to be able to give similar careful consideration to such an optional procedure after becoming a party to the Covenant, as it hoped to be able to do.

33. Mr. HELDAL (Norway) said that without effective measures of implementation the Covenant would be little more than a further declaration. The instrument placed certain responsibilities on the organized international community which should exercise some supervisory functions to see that those responsibilities were carried out. Appropriate implementation measures should include, first, an obligation on States to submit reports and provision for examination of such reports by international bodies, secondly, a procedure for dealing with State-to-State complaints relating to non-observance of the Covenant and, thirdly, an individual complaints procedure.

34. With reference to the opposition to and misgivings concerning the system of implementation proposed in the draft Covenant, he pointed out that the majority of Members of the United Nations had accepted similar or more far-reaching measures of implementation in other international organizations. In ratifying conventions of the ILO, they accepted the international supervision system provided for in the ILO Constitution. The ILO system provided for examination by an expert body of the reports of member States on the application of ratified conventions, and a procedure for dealing with party-to-party complaints concerning the observance of the conventions; that procedure included examination by a special Commission of Inquiry and in some cases by the International Court of Justice. The ILO system also entitled trade unions and employers to make representations to the ILO that a member State had failed to secure the effective observance of a convention to which it was a party. Those far-reaching measures had not created the difficulties for individual States or the international community which some delegations seemed to fear; on the contrary, they had added to the effectiveness of the ILO conventions, and in particular the comments of the ILO supervisory bodies on the reports of States had helped many of them to overcome obstacles in the way of the full application of the instruments.

35. Some speakers had expressed concern about the financial implications of the proposed measures of implementation. He took the view that financial consideration should not deter delegations from establishing effective implementation measures for an

instrument of such importance. The draft articles of implementation before the Committee offered a satisfactory basis for discussion. The amendments in documents A/C.3/L.1373 and Add.1 and A/C.3/L.1379 contained a number of interesting and commendable proposals, but he noted with regret the proposal to delete all references to the International Court of Justice and the proposal to make the State-to-State complaints procedure optional instead of obligatory. His delegation supported the Netherlands proposal concerning complaints from individuals or groups of individuals (A/C.3/L.1355, third amendment).

36. Mr. KOITE (Mali) observed that his delegation, which had become a sponsor of the amendments in document A/C.3/L.1373 and Add.1, had in point of fact been opposed to the establishment of implementation procedures differing from those adopted for the draft Covenant on Economic, Social and Cultural Rights, but in a spirit of solidarity had agreed to subscribe to those amendments. However, having heard the views of a number of delegations, and wishing to bring its position into line with the stand it had taken on the other draft Covenant, he asked that his delegation's name should be removed from the list of sponsors (A/C.3/L.1373/Add.1).

37. Mr. HANABLIA (Tunisia) said that his delegation, whose co-sponsorship was also indicated in document A/C.3/L.1373/Add.1, would remain a sponsor even though it had opposed the establishment of a special committee in connexion with the other Covenant. His

delegation still placed confidence in the Economic and Social Council and favoured compulsory reports to that body. It believed, however, that there should be a human rights committee to deal with any disputes arising in connexion with the interpretation or application of the Covenant. More specifically, the proposed committee should examine complaints between parties, but only when the countries in dispute had recognized the Committee's competence. Furthermore, the committee should act only after all means of conciliation at the international level had been exhausted. The committee's action would not take the form of decisions but simply of fact-finding. Committees of the kind proposed existed under regional arrangements and under the constitutions of such specialized agencies as the ILO and UNESCO. His delegation believed that the draft Covenant should be at least as far-reaching in its provisions as relevant regional agreements.

38. The developing countries faced complex problems in restructuring their economic and social patterns, which were not entirely of their own making. If they accepted a human rights committee, it was because they had faith in the principles of human rights, for whose sake they had fought colonial domination, and because they felt that they had nothing to hide and would willingly face those who had had time and means on their side. For all those reasons his delegation would remain a sponsor of the amendments in document A/C.3/L.1373 and Add.1.

The meeting rose at 1.5 p.m.