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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 (A/2929, CHAP. X; A/5702 AND ADD.1, A/6342, ANNEX II.A, PART V; A/C.3/L.1352, A/C.3/L.1353, A/C.3/L.1359, A/C.3/L.1367-1369)

1. The CHAIRMAN reminded the Committee of its decision at the previous meeting to take up the final clauses of the draft Covenant on Economic, Social and Cultural Rights (A/6342, annex.II.A, part V).

2. Mrs. DMITRUK (Ukrainian Soviet Socialist Republic) introduced her delegation's amendments (A/C.3/L.1359). She pointed out that the two amendments to article 26 were based on the principle that any State should be able to become a party to so important an instrument as the Covenant on Economic, Social and Cultural Rights, since all human beings should be in a position to enjoy the guarantees provided by the Covenant, irrespective of the political, social or economic system of the country in which they lived. Any clause which prevented certain States from becoming parties to the Covenant would be discriminatory, would run counter to the spirit and letter of the Covenant and would impair its universality. Whenever the General Assembly had adopted resolutions affecting the whole of mankind, such as resolutions 1598 (XV), 1779 (XVII) and 1978 (XVIII), it had addressed itself to all States, without exception. The Committee should follow that example and reject an outdated formula which belonged to the time of the cold war.

3. Her delegation proposed the deletion of article 28 of the draft Covenant on Economic, Social and Cultural Rights, which would not make any difference to the inhabitants of colonial territories. Since colonialism, by its very essence, ran counter to the interests of peoples and was incompatible with respect for human rights and fundamental freedoms in such territories, the prime necessity was to eliminate colonialism itself. Article 28, on the contrary, apparently sought to perpetuate the status quo. Moreover, there was no provision of that kind in the international Convention on the Elimination of All Forms of Racial Discrimination.

4. Her delegation's amendments to article 29 were designed to remove proposed amendments to the Covenant from United Nations supervision. In view of the fact that there were some States in the General Assembly which were hostile, or simply indifferent, to the draft Covenants and would not be signing them, there was no reason to give them the right to participate in the examination of proposed amendments.

5. The CHAIRMAN asked delegations which had submitted amendments to confine their remarks to the amendments relating to article 26.

6. Lady GAITSKELL (United Kingdom) pointed out that it was more than ten years since the Commission on Human Rights had adopted the text of the final clauses of the Covenant. Since then, many international instruments had been drawn up and new provisions relating to entry into force had been devised. In the view of her delegation, some of the provisions of article 26 adopted by the Commission on Human Rights (A/6342, annex II.A, part V) were now outdated. It was for that reason that in the new text of article 26 contained in the United Kingdom amendment (A/C.3/L.1352), two new methods for States wishing to become parties to the Covenant had been proposed, namely, signature followed by acceptance, and acceptance.

7. The term "acceptance" was used of a procedure corresponding to both ratification and accession. The fact that the term "ratification" had a particular meaning in the constitutional law of some countries might give rise to difficulties. The use of the term "acceptance" could make it easier for such countries to become parties to the Covenant. However, if that wording would itself create constitutional difficulties, her delegation would be equally happy with the terminology of "signature, ratification and accession". That was a purely technical question on which her Government held no strong views.

8. On the question of participation, the guarantees provided by an instrument of such importance as the International Covenants should not be limited only to States Members of the United Nations. Consequently, paragraph 1 of the United Kingdom amendment to article 26 was designed to extend the option of becoming a party to the Covenant to any State Member of the United Nations, any State member of any specialized agency of the United Nations, or any State Party to the Statute of the International Court of Justice, as well as to any other State to which the General Assembly might address an invitation.

9. It was important to define accurately who could become a party to the Covenant; it was essential that the Secretary-General, who would be the depositary of the Covenant and the instruments of acceptance, should know conclusively whether the entity from which such an instrument emanated was actually a State. It was well known that there were authorities whose claims to be independent States were doubted or challenged by many others. It was therefore not sufficient to refer to "all States" or "any State"; it was therefore important to establish a clear list indicating the States which were entitled to become parties to the Covenant. The list proposed was not a closed one because it provided for the General Assembly to invite any State it chose not belonging to any of the three categories to become a party to the Covenant. Thus, it would be for the General Assembly as the highest competent organ of the United Nations, and not for the Secretary-General, to determine whether a prospective party was or was not a "State". The clause in question was not an innovation, since there were similar provisions in many instruments including the International Convention on the Elimination of All Forms of Racial Discrimination.

10. With respect to paragraph 3 of the amendment she said that the rather small figure of twenty ratifications had been retained in order not to delay unduly the entry into force of the Covenant.

11. Her delegation would comment on the contents of paragraphs 4 and 5 of its amendment in greater detail when introducing the amendment contained in document A/C.3/L.1353.

12. Mr. PAOLINI (France) recalled that, when the Commission on Human Rights had been completing its consideration of the draft Covenants in 1953 and 1954, it had recognized that the number of ratifications or accessions needed to bring the Covenant into force would have to be changed. The figure which had been adopted had been inadequate even twelve years previously. However, the Commission on Human Rights, which had rather a small membership, had preferred to leave the clause in question to be reviewed by the General Assembly. Obviously, account must be taken of the fact that many States had become Members of the United Nations and that the retention of the figure of twenty would result in a paradoxical situation, in that, if the Covenant entered into force as soon as the twentieth instrument of ratification had been deposited, the first States to become parties to the Covenant would almost automatically be represented in the committee, especially if the latter was to consist of eighteen members as some delegations had proposed. The Covenant on Economic, Social and Cultural Rights, ratification of which posed no major problems for most of the developed countries, would be ratified first by them. It was with a view to ensuring that the Covenant had a much wider impact that his delegation had joined with others in proposing the amendment in document A/C.3/L.1367.

13. The International Covenants on Human Rights could not be equated with other international instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination, because the Covenants related to the whole range of civil, economic, social and cultural rights. They were therefore of exceptional importance and were closely linked to the Universal Declaration of Human Rights and the Charter of the United Nations. There were some obstacles to their intended universality, since the purpose of the Covenants was the international codification of a number of principles which were essentially within the purview of the domestic legislation of each State. Nevertheless, the ideal universality, although difficult of achievement, must be the objective sought. It was for that reason that the sponsors of document A/C.3/L.1367 proposed that the minimum number of ratifications needed to bring the Covenant into force should be set at fifty. It would not be reasonable to go below a figure which was already less than one half of the number of States Members of the United Nations.

14. Mr. RESICH (Poland) said that the present age should be the era of economic co-operation and friendly relations. However, only peoples which were free and equal in rights could maintain peaceful relations. "The principle of equal rights of peoples" was therefore one of the fundamental principles of the Charter, and the universality of rights was a corollary of it. Consequently, a State could not legitimately be prevented from becoming a party to an international treaty which concerned the whole of mankind. All States must be allowed to accede to such a treaty, irrespective of their economic, social or political structure, and even if they had not participated in the drafting of the treaty or were not members of the international organization under whose auspices the treaty had been prepared.

15. The United Nations had for long been concerned with the question of the universality of multilateral treaties. Certain resolutions, such as resolutions 1378 (XVI) on general and complete disarmament, 2028 (XX) on non-proliferation of nuclear weapons and 2054 (XX) on the policies of apartheid of the Government of the Republic of South Africa were of a universal character, since they were addressed to all States without exception. The drafting of the Covenant should be the occasion for establishing the primacy of that principle in the United Nations. Experience had shown that the only treaties to stand the test of time had been those which were of a universal character. He would therefore endorse the Ukrainian delegation's amendments to article 26 contained in document A/C.3/L.1359.

16. Mr. ATASSI (Syria) said that if only twenty accessions were needed for the Covenant to enter into force its universal character would be endangered. The Covenant would carry far greater weight if the the minimum number of ratifications was fixed at fifty. In any case there might be fewer disadvantages in delaying somewhat the Covenant's entry into force than in limiting its scope and diminishing its effectiveness. He approved the amendment in document A/C.3/L.1367 and was glad to see a western Power among its sponsors.

17. The United Kingdom amendment (A/C.3/L.1352) however, was complicated and ambiguous; it was unfair to exclude some countries and the constitutional difficulties to which reference had been made were artificial since the primacy of international law over municipal law had long been an accepted legal norm.

18. The Ukrainian amendments to article 26 were clear and designed to achieve effectiveness. Furthermore, they were in conformity with the spirit of the Charter since they called on all States without exception to become parties to the Covenant, irrespective of whether they were or were not States Members of the United Nations or members of the specialized agencies.

19. Mrs. IDER (Mongolia) regretted that some delegations, particularly the United Kingdom delegation, had submitted amendments which would exclude certain States. She would be unable to support the United Kingdom amendment (A/C.3/L.1352) as it was based on ideas that were incompatible with the principles of international law. All States should be able to participate in international co-operation in complete freedom and regardless of their political, social or economic system or their level of development.

20. Some States which were now seeking to frustrate the universality of the Covenants had nevertheless become parties to multilateral treaties which had been opened for signature by all States. Thus, the United States had signed the Declaration on the neutrality of Laos[1] and the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water.[2]

21. Her delegation could not accept article 26 in its present form but would vote in favour of the Ukrainian amendments thereto.

22. Mr. CAPOTORTI (Italy) said that article 26 and the amendments thereto raised three important questions: which States were to be invited to become parties to the Covenant; what was to be the ratification procedure; and how many ratifications were to be required for the Covenant to enter into force.

23. The first question was not new: it had been discussed only a week before in the Sixth Committee under agenda item 84 (Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session) when it had been necessary to decide which States should be invited to take part in the international conference of plenipotentiaries on the law of treaties. The formula then adopted was the one proposed by the United Kingdom in its amendment (A/C.3/L.1352), namely, to admit States Members of the United Nations or members of the specialized agencies, States Parties to the Statute of the International Court of Justice and any other States invited by the General Assembly. In the present instance the reasons for adopting such a formula were even clearer since the Covenant was intended to supplement the machinery for the protection of human rights for which there were precedents in the Charter and in the Universal Declaration of Human Rights; it had such close links with the Charter that it was often difficult to draw a dividing line between the obligations imposed by the two instruments or between the powers conferred by them upon the Economic and Social Council. Since a State had to fulfil certain conditions in order to become a Member of the United Nations and since its admission depended on the decision of certain organs, it was logical that the General Assembly should be asked to decide whether a State, which was not a member of the United Nations, fulfilled the necessary conditions for becoming a party to a Covenant which was so closely linked with the Charter. The United Kingdom proposal respected the principle of universality and did not close the door to any State, provided that it was accepted by the General Assembly. There was no question of rigidly limiting in advance the number of States which might become parties to the Covenant and the General Assembly alone could determine the conditions for their admission. The formula proposed by the United Kingdom was broader, moreover, than the original text of the Commission on Human Rights and was identical with the one adopted in 1965 in article 17 of the International Convention on the Elimination of All Forms of Racial Discrimination.

24. With regard to the procedure by which a State could become a party to the Covenant, he considered the United Kingdom formula an excellent one since it offered a choice between two possible methods: signature followed by acceptance or acceptance alone which was held by some to be equivalent to ratification.

25. On the question of the number of ratifications needed for the Convenant to enter into force, the United Kingdom text did not differ from that of the Commission on Human Rights whereas the amendment in document A/C.3/L.1367 would raise the number from twenty to fifty, which might considerably delay the Covenant's entry into force. While he appreciated the reasons given by the French representative, he wished to emphasize the advantages of early implementation. Such a large number of ratifications was very rarely required for the entry into force of an international convention and only twenty-seven ratifications were required for another convention on human rights, namely, the International Convention on the Elimination of All Forms of Racial Discrimination. A solution might be found in a figure half way between the two figures proposed.

26. Mrs. HARRIS (United States of America) said that she did not see how the formula proposed by the United Kingdom could endanger the principle of universality since, as the Italian representative had rightly observed, any State could be invited by the General Assembly to become a party to the Covenant. It was not the responsibility of the Secretary-General to decide whether a State fulfilled the necessary conditions for becoming a party to the Covenant. That was a political decision to be taken by the General Assembly. She suggested that the opinion of the Legal Counsel of the United Nations should be sought in that regard.

27. Mr. GROS ESPIELL (Uruguay) said that, of the three formulae proposed for defining the conditions for accession to the Covenant, the United Kingdom proposal seemed the best, since it took into account the principle of universality and such precedents as the International Convention on the Elimination of All Forms of Racial Discrimination and the international conference of plenipotentiaries on the law of treaties in connexion with which the Sixth Committee had recently adopted an identical solution. However, he did not approve the new terminology proposed by the United Kingdom which would substitute the term "acceptance" for the terms "ratification" and

[1] United Nations, Treaty Series, vol. 456 (1963), No. 6584, p. 301.

[2] Ibid., vol. 480 (1963), No. 6964, p. 43.

"accession", terms which belonged to the regular vocabulary of international law.

28. With regard to the number of accessions required for the Covenant's entry into force, he appreciated the theoretical and practical reasons advanced by the French representative in support of a larger number and he himself considered the number proposed by the Commission on Human Rights to be inadequate in view of the increase in the membership of the United Nations since the time when the Covenant had been drafted. Nevertheless, the figure of fifty proposed in the amendment in document A/C.3/L.1367 would unduly delay the Covenant's entry into force and he agreed with the Italian representative's suggestion that an intermediate figure should be chosen such as the one adopted for the International Convention on the Elimination of All Forms of Racial Discrimination. Thirty might be a satisfactory compromise.

29. The question of reservations mentioned in paragraph 4 of the United Kingdom amendment (A/C.3/L. 1352) was not dealt with in article 26 and should be clarified.

30. Mrs. DAES (Greece) said that she unreservedly supported the amendment in document A/C.3/L.1367 of which she wished to be a co-sponsor.

31. Mr. DAS (Malaysia) said that the Ukrainian amendments to article 26 contained in document A/C.3/L.1359, which proposed that the Covenant should be opened to all States, were not in accordance with the spirit of the Charter. How could anyone expect that States, whose legal principles were often far removed from those of the United Nations and which had shown reluctance to sign the Charter and the Universal Declaration of Human Rights, would be sincere in their accession to the Covenant? Conditions must be laid down for accession, so that the decision would depend on the General Assembly.

32. With regard to the number of signatures needed for the Covenant to enter into force, it was clear that the figure set by the Commission on Human Rights was no longer appropriate for the present membership of the United Nations. However, the number proposed in the amendment on document A/C.3/L.1367 might lead to considerable delay and, like the Italian representative, he preferred an intermediate figure.

33. Mr. BEEBY (New Zealand) said that he was not unmindful of the French representative's arguments for raising the number of ratifications required for the Covenant to enter into force, but the number proposed in the amendment in document A/C.3/L.1367 would unduly delay the implementation of the Covenant. If there was to be a greater figure than twenty he preferred an intermediate number such as the one adopted for the International Convention on the Elimination of All Forms of Racial Discrimination. The procedure of acceptance rather than ratification would not create any constitutional difficulty for his country and he was prepared to support the formula proposed by the United Kingdom. With regard to the question of which States could become parties to the Covenant, the United Kingdom's solution seemed greatly preferable to the two others since it took into account the principle of universality and broadened the formula proposed by the Commission on Human Rights. The formula proposed by the Ukrainian SSR, however, was unacceptable because of the practical difficulties involved. The Secretary-General could not be asked to decide which States could become parties to the Covenant since by such a decision he might become involved in political disputes and his impartiality would be compromised. Furthermore, the Secretary-General had already stated on other occasions that he could not accept such a task. He therefore supported the United Kingdom proposal which, while inviting certain categories of States, enabled all States to become parties to the Covenant if the General Assembly so decided.

34. Mr. GRONDIN (Canada) said the Ukrainian proposal would place the Secretary-General in an embarrassing position by requiring him to decide which States could become parties to the Covenant, thus obliging him to make a political judgement. The best procedure, in his view, was that already followed in the case of the International Convention on the Elimination of All Forms of Racial Discrimination and copied in the United Kingdom amendment.

35. Mrs. SEKANINOVA-CAKRTOVA (Czechoslovakia) said the Covenant should be open to all States without restriction. To limit accession to States Members of the United Nations or to States invited by the General Assembly would run counter to the principle of universality which was particularly important where human rights were involved. The General Assembly might in fact decide, on political grounds, not to allow the accession of certain States. On the other hand States such as South Africa would be automatically entitled to accede to the Covenant. For that reason her delegation formally rejected the United Kingdom amendment and unreservedly supported the Ukrainian proposal.

36. Mr. A. A. MOHAMMED (Nigeria) said that he would not at present join in a political debate on the principle of universality but reserved the right to return to that question at a later stage. His delegation had certain misgivings with regard to the amendment in document A/C.3/L.1367. At the rate at which international instruments were normally ratified it would take almost twenty years for the Covenant to come into force. The subject of the Covenant was vital, however, and the text had already been under consideration for twenty years. It would therefore be preferable to adopt a solution similar to that chosen for the International Convention on the Elimination of All Forms of Racial Discrimination and, considering the importance of the Covenant, to require thirty ratifications. His delegation was therefore unable to support the amendment in document A/C.3/L.1367. In agreement with other delegations, he proposed the insertion of a new article after article 29.[3]

37. Mr. RICHARDSON (Jamaica) said the Committee should bear in mind that the figure of twenty ratifications mentioned in the text of the draft Covenant had been agreed upon long before. Since then, there had been a rapid increase in the membership of the United Nations. The figure in that text was therefore too low, whereas the figure of fifty ratifications proposed by the French delegation seemed too high. An

[3] The amendment was subsequently circulated as document A/C.3/L.1370.

appropriate number to choose would be one third of the number of States at present Members of the United Nations. His delegation therefore proposed that the number of ratifications required should be set at forty.

38. With reference to the Ukrainian amendments to article 26 and the United Kingdom amendment, his delegation believed that, among all the questions with which the United Nations was concerned, the question of human rights stood in a special category and should be isolated as far as possible from political differences. International co-operation could only progress through wider acceptance of the rule of law among States. There must be a willingness on the part of all States to accept the progressive encroachment of a supra-national body on national authority. The implementation of human rights appeared to offer an opportunity for increasing affirmation of the authority of that supra-national body. His delegation would therefore support any decision tending to remove the question of human rights from the political arena and furthering the acceptance of a supra-national system of law.

39. His delegation hoped that the Covenants, as instruments drawn up by the United Nations, would be open to all States, but considered that the difficulties to which hasty adoption of a new formula in that regard might give rise should not be overlooked. As had already been observed, if it were left to the Secretary-General to decide which States could become parties to the Covenants he would be obliged to refer the matter to the General Assembly for a decision. It was therefore preferable to adhere to the formula adopted in the case of the International Convention on the Elimination of All Forms of Racial Discrimination. His delegation would have no difficulty in accepting either of the two solutions proposed in paragraph 1 of the United Kingdom amendment.

40. Mr. HELDAL (Norway) agreed with the Jamaican and Nigerian delegations that the figure of fifty ratifications was too high and would unduly prolong the period before the Covenant entered into force. The experience of the United Nations and the specialized agencies showed that it would take many years to obtain such a number of ratifications. His delegation therefore considered it wise to select a figure near that chosen for the International Convention on the Elimination of All Forms of Racial Discrimination.

41. Mr. QUADRI (Argentina) said that he would not comment immediately on the Nigerian proposal. The United Kingdom amendment seemed entirely acceptable and consistent with United Nations precedents. He would therefore give his unreserved support to that proposal. The term "acceptance" would not present any particular constitutional difficulty for his Government since the United Kingdom representative had explained that the term also covered ratification. He could also accept the proposal in document A/C.3/L.1367 on condition that paragraph 5 of the United Kingdom amendment was adopted.

42. Mrs. BULTRIKOVA (Union of Soviet Socialist Republics) said that her delegation fully supported the Ukrainian amendments to article 26. The Covenant must be open to all States from the outset. That was the only solution consistent with the Charter provisions which called on States to promote human rights and with the text of the Declaration of Human Rights which was of universal application. The present wording of article 26 was therefore inadequate since it mentioned only States Members of the United Nations, and in the case of non-member States, merely referred to the possibility that the General Assembly might invite them to become parties to the Covenant. If it were assumed that such invitations would be sent to all States which were not members of the United Nations, the reason for such a procedure, which would only complicate matters, was hard to discern. If, however, it meant that certain States would be excluded it would necessarily have to be concluded that the text of the article was discriminatory, contrary to the Charter and in conflict with the very terms of the Covenant itself which asserted the right of all peoples to self-determination. It should follow from that principle that the Covenant was open to all States without exception. Her delegation considered that the Ukrainian amendments corrected the inadequacies in the original wording of article 26. The accession of non-member States was, moreover, a provision which had been incorporated in many international instruments drawn up under United Nations auspices. It was a fact, however, that no such invitation had ever been extended in past years. The clause concerning the General Assembly was unworkable and would certainly remain a dead letter. There was however another procedure which had proved its effectiveness. In certain instances the General Assembly addressed itself to all the States of the world and, during its twentieth session especially, there had emerged an increasing tendency towards a strengthening of the universality of the United Nations and its activities. It was therefore unnecessary to seek the opinion of the Legal Counsel as the United States representative had suggested, since the General Assembly had itself dealt with the matter with which the Third Committee was concerned by adopting resolutions addressed to all States without exception, several of them dealing with international agreements or the fulfilment of obligations arising from such agreements.

43. For the same reason, her delegation strongly opposed the United Kingdom amendment. That text was discriminatory since it did not permit all States, without exception, to become parties to the Covenant. It aimed, in fact, to transform the Covenant into a third-class agreement which did not even require ratification, or, in other words, approval by the highest legislative bodies.

44. Finally, with reference to the amendment proposed in document A/C.3/L.1367, her delegation thought that the figure of fifty ratifications was quite appropriate since it emphasized the great importance of the Covenant which must be open to the greatest possible number of States.

45. Mr. TSAO (China) endorsed the comments of the representatives of Malaysia and New Zealand on the question of the States to which the Covenant should be open. The principle of universality which had been invoked during the discussion was certainly a persuasive argument but it was not a decisive one. The Charter, in laying down the requirements for

membership in the United Nations, made no reference to that principle which was therefore not recognized by the Organization. As for "political entities", they were to be found to some extent all over the world. If they did not have the qualifications necessary for membership in the United Nations or its specialized agencies there was no reason to invite them to become parties to the Covenant. His delegation would therefore vote against the Ukrainian amendments to article 26 and support the United Kingdom amendment which, in his view, was sufficiently broad in scope to embrace all suitably qualified States. The procedure recommended in the latter amendment was, moreover, current practice in the United Nations. As for the number of ratifications to be required, he agreed with most of those who had spoken that a figure should be chosen which was neither too low nor too high. He suggested that it should be fixed at twenty-seven, as in the case of the International Convention on the Elimination of All Forms of Racial Discrimination. His delegation would consider favourably any reasonable suggestion that was not too far removed from that figure.

46. Mr. STAVROPOULOS (Legal Counsel), replying to the question as to how the Secretary-General, as the depositary of the Covenant, would interpret the formula proposed by the Ukrainian SSR, said that in a case such as that referred to, the Secretary-General would have to interpret what was meant by "any State". The Secretary-General's position on that question was the same as that which he had explained many times, in particular on 18 November 1963 at the 1258th meeting of the General Assembly.[4/] It was the responsibility, not of the highest official of the Organization, but of the competent organs to decide any highly controversial political question and to determine which entities might be covered by that expression. Consequently, if the Third Committee adopted the Ukrainian delegation's proposal, the Secretary-General would request the Committee and the General Assembly to provide him with a list of the States covered by the expression "all States".

The meeting rose at 1 p.m.

[4/] Official Records of the General Assembly, Eighteenth Session, Plenary Meetings, Vol. II, 1258th meeting, paras. 99-101.

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