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CONTENTS

Chairman: Mr. A. S. BOKHARI (Pakistan).

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535, E/1681 and E/1721 and Corr.1) (*continued*)

[Item 63]*

1. Mr. HOFFMEISTER (Czechoslovakia) was opposed to the inclusion of a colonial clause, which some delegations defended because of their colonial régime and others because of the imperialistic nature of their foreign relations.

2. Several speakers had centred their remarks on the specific question whether all nations were already prepared to be free. Any person living in slavery or in prison was always prepared to be free. Some had feared that the people of the colonies and dependent areas might be embarrassed if offered human rights.

3. One supporter of the colonial clause had even claimed that its inclusion in the draft covenant was entirely in keeping with the spirit of the Charter. The colonial Powers had, as such, signed the Charter and they must accept all the consequences of that commitment. The draft covenant set forth in detail the obligations contained in the Charter and those obligations could not and should not in any way be restricted so as to favour any of the signatory States. The covenant should not tend to restrict the formulation and implementation of the human rights set forth in the Charter.

4. The United Nations must not seek evasive formulas but frame a covenant which would help the oppressed peoples to become aware of their rights and help the colonial Powers to apply its provisions so as to promote respect for human rights and fundamental freedoms and to ensure equality of treatment in the economic and social fields. It was easy to understand that some colonial régimes should try to prolong the life of an obsolete colonialism or to support a more radical kind of colonialism by the application of a colonial clause, thus attempting to curb political, economic and social progress in violation of the Charter.

5. Responding to the pleas for sincerity voiced by the United Kingdom representative, he wished to state, sincerely, that his delegation was categorically opposed to the inclusion of a colonial clause and that every citizen of his country was categorically opposed to any colonial system as such.

6. The Greek representative had perhaps found the aptest expression (294th meeting) for the interests of those who defended the colonial clause, namely, the fear of too rapid a rate of progress. The advice to make haste slowly seemed rather reactionary in an era of jet-propelled planes. When the Greek representative had vaunted the Hellenic democracy reigning in Greek colonies in antiquity, he had forgotten to mention that slavery was flourishing in Greece itself at the same time. Since then the world had passed through the age of feudalism and of capitalism, and it was to be hoped that it would in the very near future witness the end of the colonial period.

7. The French representative had spoken (294th meeting) of the success of the French administration in the implementation of human rights and the promotion of independence in territories under French administration. He would, however, invite the Committee's attention to the report submitted to the Secretary-General by the World Federation of Trade Unions (E/1563 and E/1563/Add.1) which showed that discrimination based on colour or race persisted along with violations of human rights, in varying degrees, in Non-Self-Governing Territories all over the world.

8. He believed that the prolonged deliberations on the inclusion or non-inclusion of the colonial clause in the draft covenant would not keep pace with the developments that were taking place in countries which

* Indicates the item number on the General Assembly agenda.

were still smarting, to a great extent, under the colonial régime. Following on the great example of China, national and social liberation movements would certainly promote the application of the principles of the draft covenant and solve the problem of the supporters of the colonial clause as to the best way of providing the fundamental freedoms for peoples who were not yet free.

9. Mr. ALTMAN (Poland) said that the colonial clause was not new and that for a long time it had been one of the devices used by the colonial Powers to escape the responsibilities and duties incumbent upon them in connexion with Non-Self-Governing Territories under their administration. The colonial Powers said they could not assume international obligations on behalf of their Non-Self-Governing Territories on the grounds that to do so would be contrary to the rights of the latter to self-determination. If that were so, if those territories really had the right to self-determination, there could be no reason to maintain their status as Non-Self-Governing Territories.

10. That was the essential contradiction in all such arguments. The truth was, however, that the people of those territories were seriously limited in their rights. It was very significant that the colonial clause was invoked whenever the question of the rights of the peoples of those territories was brought up; it was never invoked when duties were to be imposed upon them. Thus, whenever a colonial Power had to transfer some of its powers or grant certain rights, it claimed that it did not have the consent of the population concerned; conversely, decisions binding those same people were taken without any attempt to secure their agreement.

11. Owing to certain specific obligations imposed upon the colonial Powers under Article 73 of the Charter, it was their duty to extend the provisions of the draft covenant to their dependent areas. In the view of his delegation, the inclusion of the colonial clause in any treaty was contrary to Chapter XI of the Charter. And that was particularly true in the case of the first draft covenant on human rights.

12. The reports and the debates of the Fourth Committee showed that the duties imposed by Article 73 a of the Charter upon the colonial Powers had frequently been ignored. The draft covenant on human rights must be regarded as a concrete and specific definition of the rights set forth in the Charter, both in its Preamble and in its first articles, as well as in Articles 55 and 73. The colonial clause would leave the colonial Powers free in respect of the application of the principles and provisions of the draft covenant in the very territories where the defence of human rights was most urgently needed.

13. The covenant must go further than other international conventions. While in some cases the General Assembly had recommended that signatory States should apply a convention to Non-Self-Governing Territories, mere recommendations of that kind would not be sufficient. If the draft covenant were to have any real significance, its provisions must be applied to all the territories under the administration of signatory States, including of course their colonies.

14. The Universal Declaration of Human Rights did not contain a colonial clause. It did provide that no distinction "shall be made on the basis of the . . . status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".

15. He wondered how the colonial Powers, having accepted the Declaration, could urge the inclusion of the colonial clause in the draft covenant which was intended to give that Declaration the force of law. Obviously, the colonial clause was contrary to the principles set forth in article 2, second paragraph of the Declaration.

16. History was repeating itself: the most ardent defenders of human rights were forgetting those rights when they affected the colonial question. They pressed for inclusion of the colonial clause because they wished to perpetuate a position of inferiority, oppression and arbitrary exploitation in their colonies. It was a joke in bad taste to say that it was necessary to await the opinion of the peoples of the Non-Self-Governing Territories as to whether or not they wished to be granted human rights. The reports submitted to the competent organs of the United Nations showed that oppression and exploitation characterized colonial administration.

17. The result of the insertion of the reactionary colonial clause would be that millions of men and women in colonial territories would remain outside the draft covenant on human rights and that traditional colonial exploitation would continue. The problem under discussion was not only a legal question—it was one of the most important problems of the century: the problem of human rights, social justice and economic progress for hundreds of millions of people in Africa, Asia and the West Indies.

18. On 27 July 1950 the Belgian delegate had told the Social Committee of the Economic and Social Council that the general public in Belgium would find it hard to understand that true progressive principles of human rights could be applied at once in areas where the entire population was backward.[1] Mr. Altman had too much respect for Belgium to believe that such a statement was well founded.

19. At the preceding meeting the representative of Syria had thrown a little light on the situation of the people in one of the Non-Self-Governing Territories administered by France. It was well known that the situation in those territories was not quite so rosy as it appeared to the French representative. Not long ago the indigenous population of Grand Bassam had held a huge demonstration demanding that the promises of the United Nations should be kept. Those promises and the principles of the Charter affected hundreds of millions of people in Non-Self-Governing Territories; they could never be carried out if the territories concerned were prevented from benefiting from the draft covenant.

20. His delegation would never accept the colonial clause in the draft covenant and would fight until that clause had become a dead letter. He hoped that the great majority of the Committee shared the views of his delegation on that point.

21. Mr. CHANG (China) congratulated the Committee on the current debate, which had not only

[1] See document E/AC.7/SR.153.

clarified the problem of the inclusion of a colonial clause but had practically solved it.

22. The representative of the United States had said (294th meeting) that her country, while supporting the inclusion of such a clause, did not itself require it. At the same meeting the French representative had made it clear that his country did not require the colonial clause in respect of the first eighteen articles of the draft covenant.

23. He would emphasize that the draft covenant did not deal with such matters as road traffic, customs duties or narcotic drugs: it dealt with human rights, and no one could assert that such rights should be qualified.

24. Some had argued that a colonial clause was necessary in order to permit consultation with local authorities in Non-Self-Governing Territories. The argument appeared to be sound and in keeping with the Charter. The point was, however, that there could surely be no reason to suppose that the people of the territories involved did not desire human rights. Furthermore, if the colonial Powers truly desired to develop the system of consultation with local authorities—and such a desire was highly commendable—they could easily consult the local authorities in question during the minimum interval of one year which would have to elapse before the draft covenant would be ready for signature.

25. A second argument centred around something that had been dignified by the name of "levels of civilization". During the rapid growth of empires in the nineteenth century there had been a tendency to equate the terms "imperial growth" and "civilization". It was then that the word "native" had acquired a new meaning as a designation of non-Europeans, a definition which, he feared, might still linger in the minds of some people. Civilization had largely meant European rule. A reaction to that attitude had begun to develop by the early twentieth century and, after two world wars, the world ought to have a different idea of the meaning of civilization. It was true that there were different degrees of technological and other forms of advancement but, as the Charter clearly showed, that did not mean that less-developed areas were to be exploited by outsiders.

26. Some argued that the administration of Non-Self-Governing Territories was beneficial to the Administering Authority, while others argued that it was a heavy responsibility unselfishly assumed. The responsibility could not be so very heavy, however, for all the nations concerned had been most anxious to assume it. Yet, in a sense, colonial administration was both a burden and a blessing. Apart from the sufferings of the peoples of the Non-Self-Governing Territories and from the benefits accruing to the colonial Powers, the latter also suffered because power corrupted them. The United Nations should help them by ensuring that they were no longer corrupted by such power. The non-inclusion of a colonial clause in the draft convention would be a step in that direction.

27. He noted from paragraph 34 of the Secretary-General's report on the question (E/1721 and Corr.1) that the General Assembly had eliminated the colonial clause from the 1921 Convention for the Suppression of the Traffic in Women and Children, the 1933 Convention for the Suppression of Traffic in Women of Full Age and the 1923 Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications. If it had been possible to eliminate the colonial clause from those conventions it would surely be inadvisable to reintroduce it by including it in the draft covenant. After all, the draft covenant dealt with the field of human rights and it would be difficult for the United Nations to explain why those rights should not be applied in the Non-Self-Governing Territories.

28. Mr. LESAGE (Canada) observed that, as it had no colonial possessions, Canada did not need a colonial clause; nevertheless, he would vote for its inclusion.

29. The experience of Canada itself enabled him to vouch for the sincere good intentions of the Administering Powers; they were advocating the clause simply because they wished to protect the local jurisdiction of the Non-Self-Governing Territories wherever they enjoyed it. It was, in fact, his feeling for the interests of the local authorities rather than any concern for those of the Administering Powers which prompted his support of the clause. The United Kingdom had in 1763 guaranteed to the sixty thousand French-speaking people who were in Canada at that time exclusive jurisdiction in civil rights. That guarantee had always been respected; any attempt to impose on the provincial authorities an international obligation in that field would have been regarded as a breach of a sacred pledge, an attempt to violate the rights of minorities and an unwarranted interference with local autonomy. The position of the Non-Self-Governing Territories was very similar to that of the Canadian provinces before 1867.

30. The USSR representative had argued at the previous meeting that the insertion of a colonial clause would be a violation of Articles 73 and 76 of the Charter, whereas under those Articles the Administering Powers were morally bound to promote to the utmost the protection of human rights and fundamental freedoms in territories whose peoples had not yet attained a full measure of self-government. Furthermore, to promote to the utmost was a very different matter from imposing by force; to impose the rights laid down in the first eighteen articles of the draft covenant would obviously itself be a flagrant violation of the sacred principles of self-determination.

31. The Polish representative had asked why the Administering Powers did not give the Non-Self-Governing Territories their freedom if they were so anxious for them to attain it. In Canada the growth of conditions appropriate to the full exercise of self-government had been a very slow process. Full civilization in the modern sense of the word had been attained only after, and partly as a result of, the welding of national unity by constitutional means under the protection of the United Kingdom.

32. The CHAIRMAN, speaking as the representative of PAKISTAN, said that he regretted the fact that the Committee had decided to consider the federal clause and the colonial clause separately. It would have been more logical to consider them at the same time because there was a single problem underlying both.

33. From the constitutional point of view, the position of the metropolitan Powers was that they had given a measure of self-government to their colonies and some of the provisions of the draft covenant fell within the province of local jurisdiction; those Powers should not, therefore, sign the covenant on behalf of their colonies, because to do so would be a negation of the freedoms granted and a retrograde step. The obvious reply to that argument was that the total population of the colonies was vastly greater than that of the metropolitan countries. In practice, millions of people were represented in the United Nations only by their governors, who pleaded that they could not in fact represent the peoples of their colonies, but, on the other hand, argued that the colonial peoples could not represent themselves. If, however, the metropolitan countries did not, and did not even claim to, represent the colonial peoples, it was legitimate to inquire why no proposal had ever been made in the United Nations that representatives of those peoples should be invited to attend the meetings, if only in a consultative capacity.

34. The metropolitan countries had advanced the plea that the Non-Self-Governing Territories enjoyed self-government in certain fields. Not all colonies, however, enjoyed a measure of self-government. Even when territories did have some self-government, it must be realized that government was not a conglomeration of functions but a composite single function. The metropolitan countries claimed that certain departments in the Non-Self-Governing Territories, such as education and health, fell exclusively within local jurisdiction. The metropolitan country could, however, always interfere with the local administration of education or health in the paramount interests of its national defence—the national defence of a country whose interests might very well not coincide with those of the colony concerned.

35. Furthermore, no matter how much local self-government was granted, there were always a series of intangible pressures on a colony, even if they were expressly prohibited in the constitution. Experience had shown that the colonial administrative officers could not change, even if he so desired. He belonged to the governing race; he unconsciously maintained the smug self-confidence derived from the knowledge that all the power of empire was behind him. It might be true that there were local penal codes and indigenous judges, but the law was not equally administered. In fact, in the words of the late Mr. George Orwell, "All are equal, but some are more equal than others." He himself knew of a colony in which murder was penalized by death, but for an entire century no national of the Administering Power had been executed; yet it was almost incredible that not a single murder had been committed by a national of the Administering Power in a hundred years.

36. The United Kingdom representative had quite correctly posed the problem: he had stated that it was impossible to insist that the Administering Powers should give the colonies increasing self-government and, at the same time, to forbid those Powers to enable the colonies to use it. On the other hand, it was equally contradictory for the Administering Power to state that the colonial peoples were free and at the same time to forbid them access to the United Nations. The arguments both for and against the colonial clause were in fact contradictory. That contradiction was inevitable because it was rooted in history. There was, in reality, no such thing as increasing self-government; either a people was free or it was not free. If the colonial peoples could not speak before an international body, they were not free. In fact, a demand for true self-government by people in the colonies was usually regarded as treason and treated as such.

37. When the Canadian representative had stated that the rights and freedoms embodied in the draft covenant could not be imposed by force, he had overlooked the far more important fact that the entire colonial system had been imposed by force; no colonial Power could assert that it was ruling with the free consent of the people concerned. The metropolitan countires desired the inclusion of the colonial clause merely in order to perpetuate the myth of colonial self-government.

38. When he had previously referred to that myth, certain representatives had called his sincerity in question. The question of sincerity was important, particularly as the United Kingdom representative in the Third Committee had at the fourth session of the General Assembly incorrectly accused him (Mr. Bokhari) of incorrectly accusing that representative of hypocrisy. In his opinion, the United Kingdom representative at the current session was wholly sincere in pleading for the inclusion of a colonial clause; the representative of France had pleaded with equal sincerity and even more warmth.

39. The difficulty was that power over people created a form of moral and mental astigmatism, the result of a guilty conscience. The metropolitan countries themselves were among the freest in the world; perhaps the United Kingdom at that moment was the freest of all. They had contributed enormously in the past to the theory and practice of individual liberty. Yet they were responsible for huge areas which were not free. That dichotomy led to repeated contradictions in word and deed. Where the basic situation was wrong, such contradiction was inevitable, and even more inevitable was its perpetuation in the form of a myth.

40. Those contradictions could be resolved by taking a broader view. He was not asking for something impossible, but merely that the metropolitan Powers should consult their Non-Self-Governing Territories before the covenant was drafted and again at the time of signature.

41. At the fourth session of the General Assembly, the Third Committee, by a narrow majority, and the General Assembly, by a larger one, had rejected the proposal for the inclusion of a colonial clause in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.[2] It was to be hoped, though it could not be expected, that the rejection would be unanimous in the case of the draft first international covenant on human rights. The number of colonial Powers was comparatively small; it was to be hoped that it would eventually

[2] See *Official Records of the General Assembly, Fourth Session, Third Committee,* 248th meeting and *Plenary Meetings,* 264th meeting.

dwindle to none, because they were infringing the basic human right—the right of self-determination.

42. Mr. SOUDAN (Belgium) thought that the attacks launched against the Administering Powers might be traced to a form of resentment complex felt by countries such as India, Pakistan and China, which had suffered in the past from foreign domination. Strictly speaking, Belgium was not a colonial Power; it had accepted a mandate for the Belgian Congo. It had not conquered the Congo by force, but had been instructed by the signatories of the Brussels Convention of 1890 to free that area from the scourge of the slave trade, and had done so at very considerable sacrifice to itself. The Belgian delegation would support the inclusion of a colonial clause.

43. The history of Belgium itself provided a parallel for that of the Congo and other Non-Self-Governing Territories. Originally, Belgians had been merely a collection of tribes which had been overrun by the Roman Empire. While contemporary Belgians were extremely proud of the leaders of those tribes which had battled valiantly for independence, they were well aware that they owed much of their existing civilization to Rome, and through Rome to Greece. It had, however, required centuries for Belgium to take its place in the forefront of civilization as currently understood.

44. Belgium had accepted its mandate for the Congo only fifty years previously. The Belgian administrators, at great personal sacrifice, had first stamped out the slave trade and then attempted to raise living standards, mainly by means of education. The difficulties, however, had been and still were immense. The Congo was a vast area, much of it infested with tropical diseases. It was extremely hard to obtain trained white personnel for the educational system; European families could not live there comfortably. There were in addition the difficulties of communications and language. Nevertheless in only fifty years considerable advancement had been made in primary education; secondary education had progressed; a medical school had been founded recently; and the University of Louvain had pledged itself to set up a university there within three years.

45. India, Pakistan and China had faced no such difficulties. They had been highly civilized countries when Belgium was a mere conglomeration of savage tribes. They had been able to send promising young men to universities abroad and build up an intellectual *élite*. If Belgium were compelled to withdraw its protection from the Congo, as it might have to do if no colonial clause was included in the covenant, indigenous inhabitants of the Congo would be incapable of governing themselves. There were almost no indigenous engineers, doctors, jurists or other technicians. That was a moral responsibility which the Belgian Government could not assume.

46. Belgium itself enjoyed as much freedom as the United Kingdom. It had no castes or religious discrimination. Entire freedom of the Press, of expression, of political organization and of education and respect for the dignity of the human person were not only guaranteed by the Constitution and the law but were taken for granted by every Belgian citizen, as part of his natural heritage, a far more important thing than written texts.

47. It was not true, as had been asserted, that under French and Belgian law the accused was considered guilty until he had proved his innocence. Preventive arrest was the exception and was always carried out with due process of law. Every kind of safeguard was provided for an accused person. For example, German war criminals, whom Belgians might legitimately regard as beyond the pale, were being defended without cost by the most eminent Belgian lawyers, including some who had personally been victims of the invaders. In fact, the human rights and fundamental freedoms everywhere enjoyed in Belgium went far beyond the provisions of the draft covenant.

48. Those principles were part of the natural heritage of every official and magistrate sent to the Congo. Such officials were the best protectors of the indigenous inhabitants. The Belgian Government had endeavoured to hasten the Administrative transformation of the Congo; but it had lost time through being forced to re-establish the *chefferies,* the indigenous courts, etc., measures which it had taken in conformity with the provisions of the Charter, in particular Articles 73 and 76.

49. When an intellectual *élite* had eventually been established in the Congo, it would remain associated with the metropolitan country until the day when it was able to take complete charge of the administration of the Congo.

50. The Government of Belgium therefore hoped that it would not be compelled to give immediate automatic effect, in the Congo, to the principles of the covenant, but would be permitted to judge the best and most practical time to do so.

The meeting rose at 1.10 p. m.

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