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*Chairman:* Mr. Humberto DIAZ CASANUEVA  
(Chile).

Expression of sympathy to the Government and people of Japan on the occasion of the recent disasters

1. The CHAIRMAN said that he wished to express to the Japanese delegation the Committee's deep sympathy in connexion with the disasters which had recently befallen Japan.
2. Mrs. KUME (Japan) thanked the Chairman and the Committee for their tokens of sympathy, which she would convey to the Government and people of her country.

AGENDA ITEM 48

Draft International Covenants on Human Rights (A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/5411 and Add.1-2, A/5462, A/5503, chap. X, sect. VI; E/2573, annexes I-III; E/3743, paras. 157-179; A/C.3/L.1062, A/C.3/L.1166-1169) (continued)

ARTICLE 2 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (concluded)

3. Mr. BAROODY (Saudi Arabia) said that, after listening with attention to the debate on article 2, and more particularly to the arguments advanced for and against the word "political", he had decided to submit a sub-amendment (A/C.3/L.1169) to the Chilean-United Arab Republic sub-amendment (A/C.3/L.1168); for as some delegations had rightly pointed out, the public authorities were responsible in many cases for the most serious violations of human rights, and they should not be allowed to be the judges of cases to which they were a party.
4. Within the broad framework of the public authorities, a distinction must be drawn between the administration proper and the political organs of the State. Complainants could seek recourse against the administration before certain authorities, which in some countries were termed political but which were linked directly to the administration and were, in effect, administrative authorities; one example was

the "Conseil d'Etat" in France. The political organs of the State, that was to say, those responsible to the citizens, could be classified in two broad categories—executive and legislative. Since in many cases it was the executive political organs which committed the most serious violations of human rights, they must not be given jurisdiction over the corresponding remedies. The legislative organs, on the other hand, had an important role to play, not only because they could set up investigating commissions but also, and particularly, because they could adopt the legislation needed to remedy a given abuse. It was not necessary for a complainant to obtain directly from the legislative organs an individual decision terminating the abuse to which he was subjected; it was enough for the Parliament to adopt legislation on the basis of which he could obtain satisfaction from either the administration or the judicial authorities. It was for that reason that his delegation was suggesting the replacement of the word "political" by the word "legislative".

5. His delegation was prepared to withdraw the amendment if it was not favourably received by the Committee.

6. Mrs. KUME (Japan) announced that, in order to facilitate the Committee's work, her delegation had decided to withdraw its amendments, although it still believed that the word "persons" was better than "individuals", and although sub-paragraph 3 (a), in its present form, was not compatible with the Japanese Constitution. To her regret, she would have to abstain in the vote on that sub-paragraph.

7. Mr. COMBAL (France) said, with reference to the second point of the United Kingdom amendments (A/C.3/L.1167) and the sub-amendments thereto (A/C.3/L.1168 and A/C.3/L.1169), that his delegation saw no difficulty in reversing the order in which the Commission on Human Rights had set out the two ideas contained in paragraph 3 (b). The question of deleting the word "political" from the list of various types of authorities competent to determine the right of a claimant raised an important problem, which had been studied by the Commission on Human Rights and was stated in very clear terms in the Annotations on the text of the draft International Covenants on Human Rights (see A/2929, chap. V, para. 16), where there appeared the very important comment that the omission of reference to political authorities would preclude the granting of remedies by the legislature or the executive in cases where they might be the only, or the most effective, agencies for that purpose.

8. In some countries, including France, the rules relating to jurisdiction, as they derived from legislation and from court decisions, did not allow claims for the annulment of certain acts of the administrative authorities or for compensation for such acts to be presented either to administrative tribunals or to the courts of law. That was no doubt regrettable, and attempts were made by jurists and by the courts to

restrict it as much as possible, but it nevertheless remained a fact. In order to meet that difficulty, the Commission on Human Rights had decided to mention "political authorities"; the term was not entirely satisfactory, but it was sufficiently broad to include both the executive and the legislature, and that was the important point. If the word "political" was deleted, there would be an omission from article 2 which would be only partially rectified by inserting the word "legislative", since in some cases the only remedy available to a claimant was against the executive authorities. Therefore, despite the drawbacks and, perhaps, the dangers involved in using the word "political", it would be better to retain it and to adopt either the Commission's text or the one proposed by the United Kingdom, as amended by Chile and the United Arab Republic.

9. Mr. ELUCHANS (Chile) reiterated that the sub-amendment, presented by his delegation and by that of the United Arab Republic, was in no way intended to make the political authorities the sole guardians and defenders of human rights, but simply to make available to the victims of violations of human rights the greatest possible number of remedies from the greatest possible number of authorities. As the sponsors saw it, the term "political authority" included both the legislature and the executive. If the Saudi Arabian sub-amendment was accepted by the Committee, the Chilean delegation would not press its proposal, but it agreed with the representative of France that the word "legislative" had the drawback of depriving complainants of any remedy before the executive organs. Some representatives were unduly alarmed by the word "political", which had been used by the Commission on Human Rights and by the sponsors of the sub-amendment in the technical sense which it had in public law, where political authority was the manifestation of public power.

10. The CHAIRMAN observed that, as the French representative had pointed out, the wording proposed by the representative of Saudi Arabia did not cover the executive authorities. He wondered whether it would not be better to insert the words "governmental and legislative", instead of the word "political", proposed by the delegations of Chile and the United Arab Republic.

11. Mr. ELUCHANS (Chile) and Mr. GHONEIM (United Arab Republic) said that they were prepared to accept that solution.

12. Mr. BAROODY (Saudi Arabia) warned the Committee against hasty acceptance of the term "governmental", since local bodies might also have to take action to protect human rights. In order to meet the difficulty mentioned by the French representative, he proposed that the word "legislative", in his own sub-amendment, should be followed by the words "or any other competent authority provided for by the legal system of the State".

13. Mr. ATTLEE (United Kingdom) thanked the representative of Saudi Arabia for his effort to accommodate the various views that had been expressed; the wording he proposed was entirely acceptable to the United Kingdom delegation.

14. Mrs. MANTZOULINOS (Greece) also thanked the representative of Saudi Arabia, but pointed out that the word "legislative" was superfluous. The legislative authorities could, of course, take action with respect to human rights, either by setting up investigating

commissions to report to them—but in that case they could not be said to be determining the right to a remedy—or, as happened in some countries, by actually determining the right of an individual or a group of individuals—in which case they were no longer acting in their legislative capacity, but under the judicial powers vested in them by law. The latter circumstance was covered by the words "or any other competent authority provided for by the legal system of the State", and the word "legislative" was therefore unnecessary. If the Committee took a different view, however, the Greek delegation would have no hesitation in supporting the new version of the Saudi Arabian sub-amendment.

15. Mr. BAROODY (Saudi Arabia) replied that legislative authorities not only had powers of inquiry but might also, where, for example, a law was capable of several interpretations one of which infringed human rights, pass a new law of interpretation to forestall abuses. Nevertheless, if the Committee thought the word "legislative" superfluous, his delegation was prepared to reconsider its position.

16. Mr. CHANDERLI (Algeria) thought that the various versions proposed to replace the text of sub-paragraph (b) prepared by the Commission on Human Rights did not appear to give real satisfaction to anyone. If the reference to political authorities were deleted, the idea of remedy embodied in the sub-paragraph would be seriously impaired. The enumeration of the competent authorities in the Saudi Arabian sub-amendment would make sub-paragraph (b) cumbersome without adding anything new; it was the more superfluous since the sub-paragraph obliged States Parties to develop the possibilities of judicial remedy.

17. In the circumstances he appealed to the sponsors of the amendments—whose goodwill and constructive intentions he fully appreciated—to withdraw them, in order that the Committee might adopt the text prepared and approved by the Commission on Human Rights after prolonged and serious discussion.

18. Mr. MELOVSKI (Yugoslavia) endorsed the Algerian delegation's remarks.

19. Mr. OSTROVSKY (Union of Soviet Socialist Republics), recognizing the merit of the Algerian representative's suggestion, pointed out that the text proposed for sub-paragraph (b) did not differ in substance from the original text but was vaguer and more diffuse. In the circumstances it might be desirable to revert to the text prepared by the Commission on Human Rights.

20. After a brief exchange of views, Mr. GHORBAL (United Arab Republic) suggested that the meeting should be suspended to enable the sponsors of amendments and sub-amendments, and the delegations favouring the retention of the original text, to reach agreement.

21. Mr. POLYANICHKO (Ukrainian Soviet Socialist Republic) supported that suggestion. The proposed suspension would also give the Russian-speaking representatives time to draw up a satisfactory Russian version of sub-paragraph (b).

22. The CHAIRMAN said that the meeting would be suspended for twenty minutes.

*The meeting was suspended at 4.25 p.m. and resumed at 4.45 p.m.*

23. Mr. GHORBAL (United Arab Republic) announced that the delegations favouring the retention of the text prepared by the Commission on Human Rights had agreed not to press their suggestion. He thanked them for their conciliatory attitude.

24. The delegations of Chile, Saudi Arabia, the United Arab Republic and the United Kingdom, with which the Sudanese delegation desired to associate itself, submitted to the Committee the following text for sub-paragraph (b):

"(b) To ensure that any person claiming such a remedy shall have his right thereto determined by the competent judicial, administrative or legislative authority, or by any other authority competent according to the legal system of the State, and to develop the possibilities of judicial remedy."

25. He hoped that that amended version of sub-paragraph (b) would be adopted unanimously.

26. Mr. COMBAL (France) said that he would prefer the words "the competent judicial, administrative or legislative authority" to be put in the plural.

27. Miss OROZCO (Mexico) said that the Spanish-speaking delegations were prepared to accept the French representative's suggestion.

28. Mr. ATTLEE (United Kingdom) accepted the suggestion on behalf of the English-speaking delegations.

29. The CHAIRMAN invited the Committee to vote on article 2 of the draft Covenant on Civil and Political Rights, beginning with paragraph 1.

30. In accordance with the wishes expressed by the Chinese and French delegations, he put the words "within its territory and" to the vote separately.

*The words "within its territory and" were retained in paragraph 1 by 55 votes to 10, with 19 abstentions.*

*Paragraph 1 was adopted by 87 votes to none, with 2 abstentions.*

*Paragraph 2 was adopted by 84 votes to 1, with 3 abstentions.*

31. In accordance with the request of the Japanese representative, the CHAIRMAN put sub-paragraph (a) of paragraph 3 of article 2 to the vote separately.

*Sub-paragraph (a) of paragraph 3 was adopted by 88 votes to none, with 1 abstention.*

32. The CHAIRMAN put to the vote the amended text of sub-paragraph (b) of paragraph 3 of article 2.

*The amended text of sub-paragraph (b) of paragraph 3 was adopted by 87 votes to none, with 1 abstention.*

*Sub-paragraph (c) of paragraph 3 was adopted unanimously.*

*Paragraph 3, as amended, as a whole, was adopted unanimously.*

*Article 2 as amended, as a whole, was adopted by 88 votes to none, with 2 abstentions.*

*Mr. Ghorbal (United Arab Republic), Vice-Chairman, took the Chair.*

33. Mr. SHERVANI (India) recalled that his delegation has asked (1257th meeting) that the Rapporteur might include a paragraph in the Committee's report specifying that the special measures adopted for the benefit of backward population groups should not be

regarded as a distinction within the meaning of article 2. Since no delegation had opposed that suggestion, he would like the Rapporteur to say in the report that the paragraph expressed the views of all members of the Committee.

34. The CHAIRMAN stated that, if there was no objection, the Rapporteur would include in the report the agreement of the Committee on the point raised by the Indian representative.

*It was so decided.*

35. Mr. SHIELDS (Ireland) explained that his delegation had voted in favour of paragraph 3 (c) of article 2, and in favour of that article as a whole, on the understanding that the commitment accepted by the States Parties to the Covenant would not oblige them to adopt measures or take any action which would interfere with the independence of their judicial authorities.

36. Mr. HERRERA (Costa Rica) said that in his country only the judicial authority had power to deal with violations of human rights and to make orders relating to remedies. Since the judicial authority in Costa Rica was completely independent, it provided the most effective protection for individuals.

37. However, his delegation recognized the existence of legal and constitutional systems which, unlike the Costa Rican system, empowered non-judicial authorities to make orders affecting personal rights. Moreover, several delegations had explained that the decisions of such authorities were not judicial. His delegation had therefore voted in favour of the joint text proposed for sub-paragraph (b).

38. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that he too had voted in favour of that text although his delegation had found the language of the Commission on Human Rights clearer and more precise. The amended version, however, far from weakening the sub-paragraph, had the merit of strengthening it, since it replaced the word "political" by more comprehensive words.

39. His delegation was very happy that the Committee had adopted article 2 of the draft Covenant on Civil and Political Rights, and that an important step had been taken towards the adoption of the Covenant as a whole.

40. Mr. YAPOU (Israel) said that his delegation had been especially happy to vote for article 2, including the new wording of paragraph 3 (b), since Israel's law now ensured to all individuals within its territory the rights recognized in the article and since in particular it ensured that all persons had a judicial remedy which might be claimed through the competent authorities. The United Kingdom amendment, as modified by the delegations which had associated themselves with it, strengthened the main purpose of the article, namely, to lay the foundation for a judicial action for remedy, before either a judicial body or a quasi-judicial public agency. In fact the conception of a political authority acting in this field was non-existent in Israel, where legislation was based on separation of the executive, the legislature and the judicature.

41. The reference to legislative authorities in paragraph 3 (b) seemed to him to overlap with paragraph 2, and also with that part of paragraph 3 (b) which said that States undertook to develop the possibilities of judicial remedy. Nevertheless, that duplication

created no difficulties for Israel's parliamentary institutions, which were constantly on guard against violations of any of its fundamental laws.

42. Miss ADDISON (Ghana) thanked the Japanese representative for withdrawing her amendments (A/C.3/L.1166), which the Ghanaian delegation could not have supported. Her delegation had favoured the United Kingdom amendment and had been particularly happy to vote for the joint text, since the changes introduced into the United Kingdom's proposal had further improved it. She agreed with the Indian representative that special measures for the benefit of certain groups of the population could not be regarded as a distinction within the meaning of paragraph 1, and she welcomed the Committee's decision to note that opinion in its report.

43. Mr. DOE (Liberia) said that he had voted for article 2 as a whole and for its separate paragraphs, but wished to state a reservation regarding the word "individuals", which had been retained in paragraph 1. He regretted not having been able to express his view on that point before the closing of the general debate, and he equally regretted the withdrawal of the Japanese amendment.

44. It was perhaps only by an oversight that the Commission on Human Rights had employed the word "individuals" instead of the word "persons". He could not believe that the Commission had chosen "individuals" in order to make a distinction between natural and legal persons, because the article was clearly not concerned with the latter. There was, however, another difference between the two words; for, while every human being was an individual, not every individual was a person. A person was an individual to whom the State conceded rights and on whom it imposed corresponding duties; and that could not be said of all the human beings living in certain colonial territories, particularly South Africa. It seemed obvious that the Commission on Human Rights had intended in article 2 to refer to the human person with his inherent rights and duties.

#### ARTICLE 4 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

45. The CHAIRMAN invited the Committee to consider article 4, and pointed out that the articles mentioned in its paragraph 2 appeared under the same numbers in their final form in document A/C.3/L.1062.

46. Mr. IONASCU (Romania) stressed the importance of article 4, which affected most of the rights recognized in the Covenant and should accordingly be drafted very precisely, so as completely to prevent States Parties from unjustifiably restricting the rights of individuals. The draftsmen should also remember that some of the rights recognized in the draft Covenant could not be subjected to any restriction, limitation or interruption without being completely nullified. That was indeed why paragraph 2 listed the articles dealing with rights which could be exercised in time of public emergency without aggravating the emergency or threatening the life of the nation.

47. There were however other rights whose exercise, though not aggravating the emergency, could not be guaranteed by the State in the exceptional circumstances referred to in the article; and it was therefore natural in those circumstances to excuse the State from guaranteeing them. He believed that, on closer analysis, other articles of the draft Covenant could be

included in the list in paragraph 2. More particularly, he did not see why the right of marriage, laid down in article 22, should be restricted in emergency situations, particularly if they subsisted for a long time. Its exercise could in no way threaten the life of the nation. Marriages had been solemnized in times of war or revolution even where the civil registration had been performed by persons not legally authorized to do so. That had happened in France in the case of the Montrouge marriages, where the mayor had violated the law in an emergency by delegating authority for civil registration to his son, who had not even been a municipal councillor, whereas under the law that authority should have been delegated to municipal councillors in the order of the number of votes they had obtained in the elections. The "Conseil d'Etat" had later revoked the authority of the registrar; but the Court of Cassation, the final instance of appeal, had held, in accordance with the maxim error communis facit ius, that the marriages which he had solemnized were none the less valid. The omission of article 22 from paragraph 2 was therefore totally unjustified.

48. The purpose of paragraph 3 should be to oblige a State Party, which took measures of derogation, to bring them immediately to the knowledge of the other States Parties, so that those might consider whether the measures impaired the provisions of the Covenant. However, the paragraph, as at present drafted, provided that the notice to other parties should mention the date on which the measures of derogation had been terminated. That showed a patent lack of logic which should be corrected, since it rendered the provision totally valueless.

49. The CHAIRMAN pointed out that, in a memorandum submitted by the Secretary-General in 1953, after the adoption of article 4 (then article 3) by the Commission on Human Rights, the following wording had been suggested for paragraph 3:

"Any State Party hereto availing itself of the right of derogation shall, through the intermediary of the Secretary-General, (i) upon making a derogation, immediately inform the other States Parties of the provisions from which it has derogated and the reasons by which it was actuated; and (ii) upon terminating a derogation, immediately inform the other States Parties of the date on which it has terminated such derogation" (E/CN.4/674, para. 31).

50. Mr. MORENO SALCEDO (Philippines) said he could not agree, as at present advised, with the Romanian representative concerning the right of marriage. Under international law, the nationals of a State at war with another State were regarded as enemies of the latter and consequently lost certain rights within its territory. There was no reason to make an exception for the right of marriage, especially as, under certain legal systems, marriage automatically conferred on one of the spouses the nationality of the other, or entitled that spouse to take up permanent residence in the State of which the other was a national. If the exercise of the right of marriage in time of public emergency were upheld, a legal conflict or even a threat to the life of a nation might result.

51. Mr. IONASCU (Romania) observed that article 2, which the Committee had just adopted, obliged a State to ensure the rights recognized in the Covenant "to all individuals within its territory and subject to its jurisdiction". Thus those rights were to be guaranteed under the domestic law of each State, whereas the

Philippine representative's argument related to private international law. Moreover, in war time, each belligerent State applied to enemy nationals within its territory measures of security which indirectly prevented them from contracting marriage. There was no express restriction of the right of marriage, but simply war-time measures of State security.

52. The CHAIRMAN suggested, to expedite the Committee's work, that the deadline for the submission

of amendments to article 4 should be set at noon on Tuesday, 12 November.

53. Mr. BAROODY (Saudi Arabia) proposed that, to give more time to delegations, the deadline should be at 4. p.m. on that day.

*It was so decided.*

The meeting rose at 5.55 p.m.