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CONTENTS

Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

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/1732) (*continued*)

[Item 63]*

1. Mr. BEAUFORT (Netherlands) stated that his delegation, while aware that the draft covenant did not completely guarantee the implementation of human rights on the international level, considered that a fuller guarantee could not be provided at the current juncture, both on account of the diversity of national public law systems and by reason of the inadequate degree of co-operation existing between States. It was therefore preferable to develop the system for the protection of human rights gradually, a few measures for international implementation being adopted as a first step, rather than to aim immediately at perfection. The Netherlands delegation was of the opinion that the failure to include the right of petition by individuals weakened the safeguards for the implementation of human rights, but that that right should not be granted to individuals, groups or non-governmental organizations until a certain practice had developed in regard to the limits to be set in that field.

2. Concerning the competence of the proposed human rights committee, he considered that it would provide the most effective possible sanction for the protection of human rights, by limiting itself, for the moment, to the impartial establishment of the facts and communicating them, with its own conclusions, to the Secretary-General.

3. As regards its composition, the Netherlands delegation approved the compromise solution suggested by the Secretary-General in his note (A/C.3/534), namely, that a certain number of the committee's members should possess legal experience.

4. It also approved the proposal to strengthen the link between the covenant and the implementation machinery on the one hand, and the United Nations on the other, by means of reports to be submitted annually by the committee to the General Assembly.

5. Lastly, he was of the opinion that, as the Secretary-General's report to the Economic and Social Council (E/1732) rightly proposed, power to request advisory opinions from the International Court of Justice should be conferred upon a competent organ, which might take account of the suggestions of the human rights committee on the subject. The Netherlands delegation suggested that the Commission on Human Rights should be given that power.

6. Mrs. LINDSTROM (Sweden) pointed out that the problem under discussion was closely connected with the first question that had been put to the Third Committee, namely, that of the adequacy of the first eighteen articles of the covenant. All obscurity or ambiguity had to be eliminated from the text of the covenant if the organ of implementation was to work effectively. The need for defining some articles more clearly had already been stressed by other delegations. Moreover, it seemed that the aim of the covenant was to protect the human rights of the individual not only against governments, but also against other individuals or organizations. That principle was clearly acknowledged in article 3, but no reference was made to it in other articles, such as article 14, to which it should nevertheless apply.

7. As regards implementation itself, her delegation favoured the granting of the right of petition to individuals and organizations because, as it was then worded, the covenant dealt almost entirely with the relations between States and their own citizens. There was a risk that article 38 might be applied only in cases of tension between two States. The right to address petitions to the human rights committee should be recognized, but that body should be empowered to eliminate anonymous petitions or those of a malicious or abusive nature.

8. In regard to the competence of the human rights

* Indicates the item number on the General Assembly agenda.

committee, the Swedish delegation approved the provisions of articles 39 and 41 of the draft covenant, by virtue of which the committee's conclusions would not have a judicial or compulsory character. She considered there were no grounds for extending its competence.

9. Moreover, she did not support the idea that the committee should request advisory opinions from the International Court of Justice, as it was undesirable that, in case of a difference of opinion between the two bodies, it should look as if the Court's opinion were in any way subordinated to that of the committee. That was one of the reasons why the Swedish delegation was of the opinion that some members of the committee must be chosen for their juridical capacity.

10. Lastly, she drew attention to another aspect of the relations between the International Court of Justice and the human rights committee. Some States had signed a declaration, under article 36 of the Statute of the Court, whereby they undertook to submit any dispute concerning the interpretation of a treaty to the competence of the Court. Thus there was a possibility, in the event that the Committee was empowered to request advisory opinions from the Court, that the latter might be approached twice on the same question.

11. Hence, the Swedish delegation had asked itself whether it would not be advisable to exclude the covenant on human rights from the field of application of article 36 of the Statute of the Court.

12. Mr. PRATT DE MARIA (Uruguay) said that his delegation found the part of the draft covenant relating to implementation inadequate and technically defective.

13. In the first place, the measures provided denied the right of petition to individuals and groups and reserved it exclusively to States. Thus, instead of ensuring protection of human rights, conditions were laid down which, paradoxically enough, would almost inevitably result in conflicts between States. For fear of granting individuals the right to bring charges against their own country, it had been found preferable to give States the right to bring charges against one another, which the Uruguayan delegation considered much more serious.

14. The authors of the draft appeared to be concerned with only one contingency: violation of the covenant by a State to the detriment of foreign nationals residing on its territory. There was, however, the more serious possibility of a violation of the articles of the covenant by a State to the detriment of its own nationals. In virtue of what principle should a third State intervene in such a case? Rather than accept the possibility of an international conflict as the only solution of the problem, would it not be much simpler to extend to the victims themselves, or at least to certain groups qualified to represent them, the right to appeal for redress of such violations?

15. The most practical solution, although it would only be a first step open to later improvement, would be to appoint a high commissioner who would intervene in cases of violations of human rights, either *ex officio* or upon receipt of a complaint. He would be assisted by a central committee or regional committees acting as a court of first instance to hear charges of violations of the covenant on human rights.

16. He recalled that a proposal to that effect had been drafted by the Consultative Council of Jewish Organizations. The Uruguayan delegation wished to reintroduce it (A/C.3/L.74) in its own name, so that the Commission on Human Rights and the Economic and Social Council might give it full attention at the appropriate time.

17. Mr. TEIXEIRA SOARES (Brazil) said that the proposed measures of implementation of the covenant appeared generally acceptable to his delegation. That did not mean that they constituted an ideal procedure for the protection of human rights; but they were a first step towards the solution of a problem which was undeniably difficult.

18. The Brazilian delegation had two reservations to make. First, the subjects of the rights stated in a covenant such as that submitted for approval should be the individuals themselves, and not governments; clearly, it was the individual who should be protected from possible abuse on the part of governments. The Commission on Human Rights should therefore draft a separate instrument extending the right of petition to individuals.

19. Analysing the modern conception of the right of petition, he referred to the latest work by Professor Lauterpacht, *International Law and Human Rights*. That eminent jurist considered as unfounded the fear that the right of individual petition would release a flood of malicious or groundless complaints which would overwhelm the qualified international bodies and paralyse their action. The example of the Trusteeship Council was enough to prove that that difficulty could be overcome. The United Nations should not be discouraged by the complexity of the task, for a bill of human rights which failed to recognize the right of individual petition would be an instrument devoid of any moral authority and would not live up to the expectations of the contemporary world.

20. The second reservation which his delegation wished to make concerned the terms of reference of the human rights committee to be set up in accordance with article 19 of the draft covenant. If the covenant was to be applied effectively, the Committee's decisions should be mandatory.

21. In conclusion, he expressed the hope that the General Assembly, at its sixth session, would have a draft covenant ensuring effective protection of human rights and fundamental freedoms which would be supported by the overwhelming majority of Member States. If that result were achieved, the Commission on Human Rights, the Economic and Social Council and the Third Committee could be proud of the successful completion of a task which would crown the efforts of the United Nations.

22. Mrs. ROOSEVELT (United States of America) recalled the decisions taken by the Commission on Human Rights at its sixth session regarding the inclusion of implementation machinery in the draft covenant. It had unanimously decided to include provisions for the consideration of State-to-State complaints, but had refused to provide for complaints brought by individuals and non-governmental organizations. It had decided to establish a permanent body to be called the human

rights committee which would be empowered, under articles 19 to 41 of the draft covenant, to examine complaints referred to it in specific cases.

23. When it had adopted those decisions, which the United States delegation fully supported, the Commission on Human Rights had pointed out that they in no way precluded the possibility of adopting separate protocols for the receipt and consideration of petitions from individuals and groups. The United States delegation was prepared to join with other delegations in asking the Commission on Human Rights to study the elaboration of such protocols.

24. Unlike the measures of implementation already adopted by the Commission on Human Rights, the proposed protocols would have to be ratified separately and should not be an integral part of the covenant, so that States not prepared to accept the right of petition by individuals or organizations could still ratify the covenant with its existing provisions on implementation.

25. Mr. CASSIN (France) said that there was no precedent for what was being attempted and consequently it was natural that the text proposed by the Commission on Human Rights should not be universally approved. He would try to make only constructive criticisms.

26. It was primarily the concern of each signatory State to ensure respect for human rights and to see that they were not violated by third parties as well as to make provision for all necessary internal appeals. For that reason, if articles 1 and 2 of the draft covenant proved inadequate, they should be supplemented.

27. With regard to the implementation, on the international level, of the rights proclaimed, it must first be determined to what extent the international community could intervene in the matter of protection.

28. In that connexion, there were two problems: the first concerned the principle of equality and reciprocity of States and the way in which they consented to limit their sovereignty. Clearly, the greater the number of signatory States, the easier it would be to implement human rights. The second problem was to increase the number of signatory and ratifying States in order to avoid too narrow a grouping of States which would consent to be bound among themselves by certain obligations but would be in an embarrassing situation vis à vis other States Members of the United Nations but non-signatories of the covenant.

29. To settle those problems, France had proposed that all States, whether signatories or not, should be placed on an equal footing and asked to submit periodic reports on the implementation of a particular right. That proposal, modelled on the practice of the International Labour Organisation and certain procedures of the United Nations, had not yet been accepted and the French delegation would not press it at the current juncture but reserved the right to bring the matter up again at an appropriate time. It felt, however, that the implementation measures drafted by the Commission on Human Rights were not yet satisfactory. In particular, it feared that the complaints relating to human rights might be of a virulent political character.

30. With regard to the composition of the human rights committee provided for in article 19 of the draft covenant, emphasis should be placed on its disinterested and semi-judicial nature. It would be imprudent to leave the final choice of its members to the signatory States alone. Those States should merely draw up a list of candidates from which the International Court of Justice could select the persons least concerned with politics.

31. The Committee's jurisdiction had not been defined in any way. In the view of the French delegation, that organ of ordinary law should intervene in cases where no other procedure could be applied. It should be clearly specified, for example, that it would not encroach upon the powers exercised, under the Charter, by the Trusteeship Council or upon the functions of certain specialized agencies like the International Labour Organisation, which was already dealing with questions arising from violations of labour agreements.

32. In connexion with the Committee's jurisdiction, Mr. Cassin noted that a European movement for the protection of human rights was being set up with a specialized committee to deal with those matters. A similar movement was taking shape in Latin America. Without prejudice to the human rights committee's world-wide jurisdiction, the right of regional bodies to settle their problems on the regional level should be recognized. No provision had been made for that delimitation of jurisdiction.

33. Finally, there was the question who should have the right to appeal to the committee. The recognition of the right of States to do so was logical, but it represented a temporary and inadequate solution of the problem. The strong trend to make the individual a subject of international law must be borne in mind. The draft covenant, however, contained no mention of the right of petition.

34. The French delegation supported the right of individuals and groups to bring complaints, but would provisionally accept the exclusion of the right of petition from the covenant and its inclusion only in a complementary protocol. It should be realized, however, that it was an important step for a State to concede a reduction in its sovereignty; consequently, the rule of reciprocity and equality among States became a much more imperative question in relation to the signature of the protocols than in relation to accession to the covenant itself, for which a simple majority of States Members of the United Nations would be adequate. He hoped that as many States as possible would adopt such a protocol.

35. He had listened with interest to the proposal of the representative of Uruguay and considered it worthy of study by the Commission on Human Rights. It would be very desirable to be able to reach a compromise by establishing a body to screen petitions and bring them before the human rights committee, which would serve as a very useful transition channel and make it possible, at a time when there was a tendency to strengthen collective political security, to strengthen legal security as well.

36. With regard to the relations between the committee and the International Court of Justice, he agreed with the representative of Sweden that article 36 of the Court's Statute should not be taken into account. A provision could be adopted, however, to enable any

State concerned to bring a question before the Court if there was an unresolved difference of opinion following the report of the Committee.

37. Mr. NORIEGA (Mexico) recalled that the trusteeship agreements contained a provision to the effect that the Trusteeship Council could not discuss judgments handed down by the courts. That provision had been based on the legitimate concern of the Administering Authorities to preserve their judicial systems and safeguard the authority of local courts. Viewed in that light, article 39 of the draft covenant was difficult to understand. How could the human rights committee deal with a matter which could be regarded as legally settled, since all available domestic remedies had not only been invoked but "exhausted"? The Mexican delegation therefore thought that the article did not take account of the need to safeguard the authority of national courts and should be studied more closely.

38. He knew of few international instruments with the exception of the international convention on narcotic drugs which provided for the establishment of a system of investigation and control to ensure the implementation of its provisions. Such a system would inevitably raise many problems: it was difficult to see how a State could recognize the right of its nationals to have recourse to an international body when they felt that the rights granted them under their own constitutions had been violated.

39. The right of petition was an extremely delicate question which the Trusteeship Council had not been able to settle to the general satisfaction despite repeated efforts. To illustrate its complex nature, he recalled that the Trusteeship Council had discussed at great length, *inter alia*, the question whether anonymous petitions were receivable. It had concluded, as one might be tempted to do upon a first examination, that they were not receivable. Experience had shown, however, that anonymous petitions were often among the most interesting owing to their general nature and to the fact that they were most often concerned not with individual cases but with the welfare of the community.

40. Mr. Noriega was inclined to favour the suggestion made by the United States delegation that the covenant on human rights should be accompanied by a protocol defining the cases where individuals would be entitled to bring complaints and the articles to which such complaints might apply.

41. The Uruguayan proposal was very interesting. Attention should be given above all to the practical and concrete aspects of the problem. After the Commission on Human Rights had reconsidered the draft covenant in the light of the Third Committee's comments, it should also consult the constitutional views of each State. It would then be in a better position to suggest the most appropriate procedures.

42. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) said that articles 19 to 41 of the draft covenant did not solve the problem of implementation and could therefore not be considered as appropriate. The covenant on human rights was intended to guarantee to the individual the enjoyment of his basic rights and fundamental freedoms. It was not enough, therefore, to recognize those rights and freedoms: they must be safeguarded. For example, if the right to life were to be made effective, the State should protect the individual from all attacks on that right, ensure proper living conditions to all its nationals, recognize the right to work and to social security in its laws. In the same way, to ensure the right of the individual to participate in the government of the State and to hold public office, the State must undertake to adopt concrete legislative measures repealing, if necessary, all property, educational or other qualifications restricting the participation of citizens in voting at elections to representative organs of government.

43. Measures of implementation therefore came within the domestic jurisdiction of the signatory States and they could not be defined without taking into account differences in political, economic and social structure between States.

44. Instead of proposing satisfactory implementation measures, a series of articles had been added to the covenant which had no connexion with the principles to be applied. On the contrary, they called for a permanent body to exercise supervision in a sphere which was normally within the exclusive jurisdiction of each government. Articles 38 and 41 of the draft covenant authorized the proposed human rights committee to interfere in the domestic affairs of a State, a procedure which his delegation considered unacceptable.

45. The only "measures of implementation" which would be both appropriate and effective were those adopted by the various governments to protect and safeguard the inalienable rights of man and of the citizen in their territories.

46. Mr. CABADA (Peru), recalling the republican and democratic tradition of his country and the part it had played in drawing up the public law of the American peoples, stated that his delegation had waited until measures of implementation were under discussion before intervening in the debate, because, in his opinion, the articles in question were most in need of comment.

47. He wished above all to stress that the criticisms brought against the preamble of the draft covenant did not implicate the Commission on Human Rights or the Economic and Social Council. The defects in the draft were due solely to the differences between the main contemporary cultural trends. The task was an extremely delicate one: it was a case of finding a general formula to reconcile heterogeneous social systems and, in many cases, conflicting legal principles.

48. The delegation of Peru would like to make some observations and formulate certain reservations in regard to the proposals contained in part III of the draft under consideration.

49. It took the view that the setting up of a human rights committee needed careful study. Generally speaking, it was not desirable to increase the number of organs of that kind which might be said to constitute veritable courts placed over and above States and which, in some cases, enjoyed the right to criticize and review decisions taken by supreme national courts, in violation of one of the fundamental principles of the Charter. When the Charter had been drawn up, the contracting parties, renouncing to some extent their absolute sovereign rights in favour of the international community, had set up as one of the main international bodies the Inter-

national Court of Justice, the only body endowed with special powers. The unique character of the International Court of Justice, its importance, the prestige it enjoyed and the precautions taken at the time it was set up, were all incontrovertible evidence that States were not disposed to sanction the setting up of other bodies with powers that were as delicate and as far-reaching, or to surrender their inalienable rights to such bodies.

50. Likewise, the delegation of Peru did not consider the procedure set forth in article 38 of the draft covenant to be satisfactory. The Government of Peru attached equal importance to human rights and to universal solidarity. Hence, it could not conceal its anxiety in respect of the methods proposed. It was undeniable that the bringing of an accusation by one State against another could only harm international concord and stir up dangerous friction between the countries. The paramount aim of the United Nations, which was to safeguard the brotherhood of the peoples of the world, would thus be jeopardized. The Members of the United Nations should not on any account allow themselves to be led into taking such a dangerous step.

51. Under the private law of all States, the right to lodge a complaint was recognized only in very carefully defined cases and accorded only to those directly injured, complaints by third parties being strictly ruled out. It should also be remembered that the principle according to which prosecution of an offender was a social, non-private act, which belonged to the State alone and not to the victim of the offence, was one of the great advances in modern penal law. In those circumstances the setting up, on the international level, of an institution which would incite States to denounce one another could hardly be approved.

52. Moreover, the delegation of Peru did not approve of the wording of article 39 of the draft covenant. The proposed text stated that "normally, the Committee shall deal with a matter referred to it only if available domestic remedies have been invoked and exhausted in the case". The delegation of Peru interpreted the word "normally" in a restricted sense as signifying that, in certain conditions, the committee might intervene without taking account of the action of the judicial organs of the State concerned. The second part of the article made it quite clear that that could be done only "where the application of the remedies is unreasonably prolonged". However, the Peruvian delegation felt some concern at the very existence of such a reservation.

53. He suggested that the Third Committee, in the face of such problems, might request the International Law Commission to give its views on the implementation measures laid down in the draft covenant and to submit recommendations for its improvement.

54. In conclusion, he stressed the need for reflection on the dangerous implications of the draft under consideration and requested the Commission to redouble its efforts to draw up an international instrument which would enable contemporary society to make a real advance along the road of freedom and at the same time safeguard the solidarity of peoples — a cause dear to the hearts of all men.

55. Mr. SAVUT (Turkey) congratulated the Commission on Human Rights on having produced a practical and realistic plan for the implementation of the covenant, which seemed in its main lines to be satisfactory. However, the Turkish delegation would like to submit a few observations on certain points of detail.

56. It was proposed in article 19 to set up a human rights committee, but he wondered what the exact nature of that committee would be. Articles 19 and 20 gave some grounds for the conclusion that the members of the committee, who were to be "persons of high standing and of recognized experience in the field of human rights", would be essentially experts serving in their personal capacity. However, article 23 contained the expression "equitable geographical distribution" which, according to the language of the Charter, would seem to indicate that the committee would be a body of government representatives. Article 34 also backed up the second interpretation since it stipulated that any State party to the covenant, concerned in a case referred to the committee, could, if none of its nationals was a member of the committee, designate as a member to participate with the right to vote in the deliberations on the case under consideration, one of its own candidates. Lastly, the measures of implementation made no provision with regard to the remuneration of the members of the committee. That might mean that the members would be paid by their own governments.

57. All those factors left some doubt as to whether the committee would be composed of experts or on the contrary, government representatives. He did not wish to defend either of those solutions but did want to point out that the nature of the committee must be clearly defined.

58. He then turned to the basic provisions of part III of the draft covenant, namely articles 38 to 41, which laid down the terms of reference of the human rights committee. The Turkish delegation whole-heartedly approved the principle whereby only a State party to the covenant could refer a matter to the human rights committee. By its very nature, the covenant was not a declaration or a proclamation of principles, but an international treaty imposing reciprocal obligations on the signatory States. Therefore, only States parties to the covenant would be in a position to judge whether one of them was respecting the undertakings it had assumed on signing the covenant.

59. Conversely, only a State party to the covenant could be accused of not giving effect to all its provisions. That was why every effort must be made to draft the covenant in terms which would make it acceptable to the greatest possible number of countries.

60. He noted that the circumstances in which a State could bring a charge against another State should be specified. If article 38 was interpreted literally, the conclusion was that a State which failed, for example, to nominate candidates for election to the committee (under article 20), or neglected to send representatives to a meeting convened for the purpose of electing the members of the committee (article 23) would be guilty of "not giving effect to a provision of the covenant" and could thus be the object of charges. More serious still, if article 1, paragraph 2, and the existing version of article 38 were taken together, the conclusion was that a State could be charged with failing to adopt legislative or executive measures. It seemed unlikely that it had

ever been the intention to give the committee such wide and theoretical authority.

61. Under articles 39 to 41, before studying a charge, the committee must determine whether available domestic remedies had been invoked and exhausted and must then "ascertain the facts". It was doubtful how that double task could be successfully completed. The Council was left complete freedom in that respect and article 40 simply stipulated that it could call upon the States concerned to supply any relevant information. Of course, the committtee could not compel States to furnish information nor could it obtain the information directly.

62. Article 41 also provided that the committee should make that information available to the States concerned with a view to arriving at a friendly solution. The Turkish delegation thought that that was a most important provision since it gave the committee an opportunity of preventing the matter from degenerating into a political dispute. The committee's role would not be one of arbitration and conciliation alone since, if did not prove possible to reach any solution, it must "include in its report its conclusions on the facts". The committee could thus sanction any violations of the principles set forth in the covenant and publicly condemn a State guilty of such violations.

63. He believed that the adoption of the measures of implementation would mark a considerable step forward in the field of human rights.

64. Mr. LEQUESNE (United Kingdom) said that the covenant on human rights introduced a new idea into international law since under it the States parties would accept mutual obligations to guarantee to the individual the enjoyment of his civil rights and fundamental freedoms. The measures of implementation in the draft before the committee were both reasonable and practicable and they marked a great step forward towards the achievement of the aim in view, which was the protection of human rights on the international scale.

65. So far, the discussion on the measures of implementation had turned almost exclusively on the question of the right of petition. At its sixth session, the Commission on Human Rights had decided, by 8 votes to 3, with 3 abstentions, not to insert in the covenant provisions regarding petitions from private persons.[1]

66. In so doing, the Commission had been guided by two considerations. First, it had realized that it would be difficult to give individuals the right to appeal directly to an international organ and at the same time to prevent any possibility of abuse. In view of the difficulties facing the world, there was no need to emphasize the risk that that right might be used for political purposes, to the detriment of the prestige of the covenant on human rights.

67. Secondly, it was necessary to be sure that the measure of implementation adopted would not have the result of lowering the prestige and authority of the national law courts. In the opinion of the United Kingdom, that authority was the best guarantee that human rights would be respected and fundamental freedoms safeguarded in a given territory. By instituting a system which would authorize the individual to appeal to an international body against the decision of a national law court, a grave risk might be run of compromising the reputation for impartiality and the prestige of the national law courts.

68. The suggestion had been made, in order to settle the disagreement dividing the supporters of the right of petition and its opponents, that a separate protocol should be drawn up. The United Kingdom delegation felt that it was hard to imagine that the majority of Member States who refused to have the right of petition recognized in the draft covenant, would suddenly change their minds when it came to inserting that right in a separate protocol. In its opinion, the suggestion only complicated the problem instead of settling it. That was why the United Kingdom delegation wished to affirm that only States should be able to bring questions or disputes before the human rights committee.

69. The United Kingdom delegation also felt that the committee's jurisdiction should be defined, so as to prevent the same matter from being examined simultaneously by several organs, such as the Trusteeship Council or investigating bodies, set up by the International Labour Organisation, for example.

70. It also suggested that an article should be added to the measures of implementation which would enable the human rights committee to obtain advisory opinions from the International Court of Justice on legal matters which it would have difficulty in solving itself, and supported the conclusions submitted in the Secretary-General's report on the same question (E/1732).

The meeting rose at 1 p.m.

[1] See *Official Records of the Economic and Social Council, Eleventh Session, Supplement No. 5* (E/1681), para. 37.

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