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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. MOODIE (Australia) thought that the scope of the discussion on the adequacy of the articles relating to implementation should be as wide as possible and that it would be most useful for the Commission on Human Rights to receive a large number of suggestions, particularly in respect of the actual wording of articles on implementation. He had been impressed by the Turkish representative's statement at the preceding meeting and was sure that the Commission on Human Rights, on which Australia was represented, would bear that statement in mind.

2. He agreed with the French representative who had said, at the 300th meeting, that the terms of reference of the proposed human rights committee should be set forth most carefully in order to avoid overlapping with other agencies or encroachment upon their spheres.

3. He wished to dwell particularly upon the question of granting the right of petition to individuals and non-governmental organizations. He agreed with the Netherlands and United Kingdom representatives (300th meeting) concerning the need for caution in approaching that problem, for it was to be feared that the granting of such a right might lead to a flood of petitions which might paralyse the entire machinery and he doubted whether adequate safeguards could be provided. He would therefore urge the Committee not to take a final decision on the matter at the current stage. If the proposed human rights committee could be approached by individual petitioners, there would be repercussions on the judicial and administrative processes of individual governments and States.

4. In Australia and, he imagined, many other States, hundreds of representations were daily addressed to the government and handled by government departments. Many of the requests, complaints, etc., dealt with matters covered by the covenant and if individuals felt they had not been given substantial justice, there was a risk that they would go to the human rights committee.

5. Appeals should not be addressed lightly to the human rights committee if it were to function effectively, and that would be even truer if economic, social and cultural rights were included in the covenant.

6. Article 39 of the draft covenant raised the difficult practical problem of how, and by whom, it was to be determined that available domestic remedies had in fact been exhausted. That point would have to be further considered if such an article were to be included in the draft covenant.

7. The draft resolution proposed by the Uruguayan delegation (A/C.3/L.74) suggested one way of limiting the number of complaints and appeals addressed to the human rights committee and merited thorough consideration by the Commission on Human Rights. It was, however, his opinion that the Assembly should not at the current stage commit itself on that question.

8. It was also difficult for him to see how any useful purpose could be served by including the right of petition of individuals and non-governmental organizations in separate protocols. He believed that it would be best to gain experience in the actual operation of the draft first covenant before deciding on the matter.

9. Mr. KAYALI (Syria) remarked that part III of the covenant, which dealt with implementation, was the most important section.

10. It was the measures of implementation rather than the preceding articles that should enable the United Nations to ensure that human rights were respected in all parts of the world. Domestic experience of States had shown that a good law was not enough; there must be adequate means to enforce it. The same was true on the international plane.

* Indicates the item number on the General Assembly agenda.

11. Most of the previous speakers had pointed out that the existing provisions for implementation were inadequate, and he agreed with that view. In particular, there were certain inadequacies in articles 38 to 41 inclusive.

12. He supported the Swedish representative's suggestion (300th meeting) that the right of petition or complaint of violation of human rights should be given not only to States, but also to individuals and groups of individuals. He was, however, unable to accept the United States representative's suggestion (300th meeting) that a special protocol should be signed by the accused State before individuals or groups could bring a complaint against it.

13. With respect to article 38, paragraph 1, he remarked that the exchange of written communications envisaged in it was far too polite and bureaucratic a method to be effective. Paragraph 2 of the same article failed to make it clear what the proposed human rights committee was expected to do once a matter has been referred to it.

14. Similarly, article 39 failed to specify who was to determine whether or not all available domestic remedies had been invoked and exhausted or whether the application of the remedies had been unreasonably prolonged. Those were complex legal questions and the Syrian delegation would not want millions of human beings to suffer while jurists argued such tenuous points.

15. He noted in passing that in article 41, paragraph 1, there was no English equivalent for the words *en même temps* which occurred in the French text and wondered whether those words were really necessary.

16. Article 41 called on the proposed committee to ascertain the facts in cases with which it was concerned and to draw up a report to be communicated to the Secretary-General for publication. Since it was probable that cases of violation of human rights would occur in dependent territories and since Article 87 of the Charter already provided for periodic visits by missions of the Trusteeship Council to Trust Territories, the Syrian delegation wished to suggest to the Commission on Human Rights that it should consider the possibility of giving the proposed committee a similar right to visit places where violations of human rights had been reported in order to ascertain the facts and to be able to submit an informed report to the Secretary-General.

17. Article 41, paragraph 3, failed to specify what sort of report the committee should prepare if no friendly solution were reached. In the Syrian delegation's view the report should both present a clear and detailed statement of facts and suggest possible solutions. As the proposed human rights committee could apply only moral sanctions, it should at least be able to do so effectively and to bring the facts to public notice. Only then would the United Nations really encourage respect for human rights and fundamental freedoms as it was bound to do under the Charter.

18. Mr. CHANG (China) considered that the designation "human rights committee" was not altogether fortunate and that the use of the word "committee" might give rise to confusion. The Economic and Social Council was considering the question of changing the nomenclature of its subsidiary organs; there was even a possibility that the Commission on Human Rights might be renamed "Committee on Human Rights". He felt sure that an appropriate designation of the proposed body could be found; it might perhaps be called the "human rights board".

19. He also felt that more attention should be paid to the important question of functions and that the relevant provisions of the draft covenant should be stated in greater detail. While articles 19 to 37, which dealt with organization, went into considerable detail, articles 38 to 41, dealing with functions, were more general.

20. Three functions were foreseen: article 38, paragraph 1, provided for direct negotiation between States; article 41, paragraph 1, assigned the function of good offices to the human rights committee, and article 41, paragraph 3, provided, in effect, for an appeal to world public opinion. Three successive stages were thus envisaged: first, direct negotiation; secondly, if that failed, an appeal to the good offices of the human rights committee; and, thirdly, if that also failed, an appeal to world public opinion. The general picture that emerged was that considerably more attention had been paid to the question of organization than to providing details about functions.

21. With regard to implementation, he had constantly urged that it should not be visualized as an essentially negative concept referring almost exclusively to complaints concerning violations of human rights, but that due attention should also be paid to its positive aspect, that is, education and promotion and protection of human rights. Much of the current debate did not actually centre on implementation so much as on complaints; he feared the development of a tendency to look for complaints. Experience in other fields showed that complaints and stern discipline were neither the only nor the best methods of promoting the achievement of positive goals.

22. There were differences between advanced and under-developed countries in that respect. Countries which had accumulated great wealth as a result of the industrial revolution had been able to use that wealth in part to secure better primary education for their citizens. The growth of education had facilitated the attainment of human rights in the advanced countries so that the under-developed countries were placed at a relative disadvantage. That inequality due to economic factors might cause under-developed countries to hesitate before joining the more fully developed countries in a covenant on human rights. He did not believe that the situation could be remedied merely by the exertion of pressure in the form of a multitude of complaints.

23. Perhaps the best way to progress was to use the Universal Declaration of Human Rights as a positive instrument for the promotion of ideals, and he hoped that the Committee would do nothing that might decrease its efficacy and influence.

24. Mr. GARCIA BAUER (Guatemala) reviewed briefly the developments which had led to the preparation of the draft covenant under consideration, emphasizing the great importance of human rights and of the United Nations role in that sphere. The question of the adequacy of the measures of implementation of the cove-

nant required the most careful consideration in view of the paramount importance of provisions aimed at the establishment of adequate machinery for the international protection of human rights. If the United Nations succeeded in establishing effective machinery, it would have taken one of the most important steps in the history of mankind. The goal must be the reign of human rights throughout the world.

25. The Commission on Human Rights had proposed that measures of implementation should be included in the text of the draft covenant. The Guatemalan delegation would prefer to see those measures included in a protocol, to be annexed to the draft covenant. Measures of implementation were, by nature, procedural and thus differed from the other provisions, which set forth the rights themselves. For that very reason they should be more flexible and susceptible of modification in the light of experience. That purpose could be achieved more readily if they formed the subject of a separate instrument, for if they were included in the draft covenant, consideration of the entire instrument would have to be re-opened whenever the question of modifying the provisions relating to implementation arose.

26. The system underlying part III of the draft covenant revolved around two fundamental ideas: the establishment of a human rights committee composed of seven members; and the view that only States parties to the covenant should be empowered to make use of the machinery to be established. He believed that the role to be played by the United Nations in the implementation of the covenant had not been fully considered. The United Nations must play an active role in whatever system might be established for the adequate international protection of human rights, but the efficacy of the method set forth in article 38 was doubtful. Article 38 provided for direct action on a State-to-State basis. That method would not only render the covenant all but ineffective but would be likely to provoke difficulties and friction. The observance of human rights was, however, a question of general interest rather than one of interest only to a particular State. That was why allegations of violations of human rights should be made directly to a suitable organ of the United Nations and the person representing such an organ should act on behalf of the United Nations with a view to preventing violation of human rights in the country concerned.

27. Perhaps the best way of ensuring the active role of the United Nations, and of demonstrating the collective nature of any action taken, would be to set up an office which might be called the "Office of the Attorney-General of the United Nations". Suitably empowered, such a United Nations attorney-general would represent the Organization in all transactions involving the defence of human rights. A similar proposal had been made by the French representative to the Commission on Human Rights in 1947, and he hoped that such a proposal would be widely supported during the current session of the General Assembly. The attorney-general would, at the proper time, substitute for the complaining parties, whether they were States, non-governmental organizations or individuals. If that were done, suspicions about the motives of those initiating the complaints should be to a large extent allayed.

28. As it was drafted, article 38 would simply open the door to interference by one State with another, and it was therefore doubtful whether it would be accepted.

29. The right to petition should be accorded not only to States, but also to non-governmental organizations and individuals. He hoped that the General Assembly would support that view for the guidance of the Commission on Human Rights in its future work. The right of individuals and non-governmental organizations to petition should be recognized in the draft first covenant.

30. The principle that international rights only existed among States had been superseded, and it was an established fact that the individual could, actively and passively, be subject to international law. Thus in the system of the League of Nations for the protection of minorities, and in the matter of mandates, the principle of the right of individuals to petition had been accepted. The 1922 Convention on Upper Silesia and the Convention for the establishment of the Central-American Court of Justice were also cases in point.

31. Fear had been expressed lest the granting of the right to petition to individuals and non-governmental organizations might open the door to a veritable flood of complaints which would paralyse the proposed machinery. He believed, however, that it should be possible to adopt regulations which would set such fears at rest.

32. Non-governmental organizations had played an important and growing part ever since the San Francisco conference and such organizations were in a position to make major contributions in the struggle to secure enjoyment of fundamental rights for all men. For that reason they should be granted the right to initiate action within the system of implementation of human rights.

33. Mr. ZELLEKE (Ethiopia) appealed for a more realistic approach to the problem of implementation, particularly on the part of the under-developed countries. The measures of implementation as they stood were unsatisfactory because they left the way open for political contention between States.

34. In detail, the measures were unsatisfactory because sufficient emphasis was not laid upon the requirement that the members of the proposed human rights committee should be persons of judicial experience and because the committee's functions were not adequately defined.

35. The principal danger lay in article 38, which was incomplete and vague, and might well be used for purely political purposes. The references to public order and national security in the first eighteen articles could easily enable any State to bring a complaint that derogations from basic rights were being made improperly under those exceptions, and the time limit of six months would permit the exercise of all manner of repressive measures against the individual concerned. It would be preferable for the States parties to the covenant to furnish an annual report on their implementation of the covenant and on the status of human rights in their territory.

36. A new approach to the problem was necessary. With sufficient patience, the United Nations organs concerned would undoubtedly be able to decide the relative merits of temporary regional courts, reference to the International Court of Justice or to an interna-

tional court for human rights or the proposed attorney-general for human rights. A practical and juridical system and machinery for petitions could be worked out, if sufficient time and labour were devoted to the task.

37. Mrs. MENON (India) said that her delegation was happy to see the growing support for the stand it had taken in the Commission on Human Rights. She pointed out, first, that the majority decisions of the Commission, which was composed of only eighteen members, were not binding on the sixty members of the General Assembly, and secondly, that on a number of issues the Commission had not reached a satisfactory agreement. The Committee was therefore free to take any position it chose.

38. An international agency to implement human rights was a new concept in international law. The need for it, however, was obvious. Violations of human rights generally occurred because the courts in a country were subservient to an arbitrary executive authority or were overruled by it. In such cases, the individual had no means of domestic redress; nor was there a domestic remedy available against discrimination based on race, sex or political opinion, which still existed in most countries in the world.

39. Consequently, it was necessary to set up a new agency, which would redress individual wrongs on the international plane. The observance of human rights was a matter of international concern because those rights belonged not to the citizens of a State or the inhabitants of a territory, but to the human beings whose dignity and freedom the United Nations had solemnly undertaken to protect. It was plain that the responsibility for the observance of human rights should rest with the United Nations, or under the guarantee of the United Nations, and not with any outside or *ad hoc* authority.

40. With respect to the composition of the proposed human rights committee, she wished to remark only that it need not be a judicial body. Since its function would be to investigate actual events, any group of persons of integrity and with a firm belief in human rights would be satisfactory.

41. Her delegation maintained its opinion that individuals should have the right to petition the proposed committee. The technicalities involved were not insurmountable and did not provide an adequate reason for denying the basic human right to appeal against a wrong. Arrangements could be made to screen petitions with a view to eliminating those which were frivolous; ILO had a provision to that effect in its Constitution. Petitions by individuals should, in fact, be encouraged as providing the best possible safeguard against violation of human rights. There was more danger of false charges being brought by States than by individuals or groups of individuals, who were more likely to be prompted by disinterested motives. The Indian delegation did not favour a separate protocol for individual petitions.

42. The Indian delegation would support the Uruguayan draft resolution (A/C.3/L.74).

43. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) maintained that articles 19 to 41 were superfluous and likely to infringe the domestic jurisdiction of States in contravention of the Charter. The measures of implementation should be an integral part of the covenant, in the form of specific obligations.

44. Mrs. AFNAN (Iraq) believed that the measures of implementation as a whole, rather than the specific details in the articles under consideration, were open to serious criticism. She therefore found it impossible to criticise the details of the measures of implementation.

45. What was needed was an entirely new conception. The Commission on Human Rights had shown a grave lack of imagination in simply following the method used in other international instruments dealing with less fundamental matters.

46. Mr. CAÑAS FLORES (Chile) emphasized that his delegation supported the general structure of the draft measures of implementation, although it had certain reservations to make about the details. Some delegations had complained that the articles were too unrealistic; but it was doubtful whether the imagination of the peoples concerned could be fired unless the problem were approached with considerable idealism.

47. The provision for a human rights committee in article 19 was the keystone of the measures of implementation. It could not be confused with the Commission on Human Rights, because it would deal exclusively with the implementation of the covenant; the functions of the two bodies would be totally different. Such a committee would be essential, because in default of it there would be no way of implementing the first eighteen articles.

48. He had, however, some doubts about the wisdom of the Uruguayan delegation's proposal for the establishment of an agency of the United Nations to be known as the office of the attorney-general for human rights, although that idea might be worthy of study. That attorney-general would be a form of secretary-general in his field; and the position of the Secretary-General of the United Nations was currently the subject of controversy. The position of a virtual secretary-general for human rights might be even more difficult if he were called upon to decide the truth or untruth of complaints lodged by States. Moreover, the attorney-general's office might be an inopportune burden on the budget of the United Nations.

49. It was to be hoped that some method would be found to reconcile the requirements of domestic legislation and of the covenant. If all countries maintained that their domestic legislation had prior validity, the covenant would never be properly implemented.

50. It had been argued that article 38 would be used for denunciation of one State by another. At the existing stage of society, however, that danger was not so serious as the possibility that the provisions of article 38 might remain inoperative. Governments had a certain sense of international responsibility and might therefore be less eager to avail themselves of their powers under article 38 than individuals would be.

51. The best way to obviate both those dangers would be to grant the right of complaint and petition only to non-governmental organizations with strictly defined characteristics. His delegation would introduce an amendment to that effect.

52. Mr. MACCAS (Greece) was, in principle, in favour of the establishment of a permanent body for the implementation of the provisions of the covenant, but thought that another permanent organ should also be set up to screen complaints and classify those which could properly be received by the larger body. That work might be performed either by the proposed office of the attorney-general for human rights, if such an office were ultimately set up, or by the secretariat of the proposed human rights committee. If the latter solution were adopted, it should also be stipulated that the secretariat should be assisted by representatives of the State which had lodged the complaint and the State against which it had been lodged. The number of members proposed for the committee was too low. The number of ratifications required under article 42 should not be twenty, but thirty-one, the simple majority of the United Nations; and the date when the covenant should come into force should be specified as the date on which thirty-one States had deposited instruments of ratification. Article 33 stated that five members should constitute a quorum of the human rights committee: he considered that number too low also; the international reputation of a State should not be at the mercy of three members, the majority of the quorum. The quorum should therefore be raised to ten. The Council of Europe had a similar committee, which dealt with the far less important work of screening petitions; its membership was equal to the number of the high contracting parties.

53. Besides the permanent committee on human rights, there should be established a purely judicial body similar to the *ad hoc* court set up by the Council of Europe. The United Nations body would, however, suffer from two disadvantages not shared by the court at Strasbourg. It would not enjoy the similarity of geographical and psychological outlook, and of legislative and political systems, that was characteristic of the Council of Europe. Furthermore, it would be set up to make available its good offices and to draw up a report, as provided in article 41, rather than to pass sentence or even hand down advisory opinions.

54. He was in favour of the provision in article 38 that only States parties to the covenant might lodge complaints against one another. If the right of complaint were given to individuals or non-governmental organizations, the way would be opened to subversive propaganda by members of so-called fifth columns. It had been said that the procedure laid down in article 38 might lead to an increase of international tension and that to give the right of complaint to individuals and non-governmental organizations might well lead to the spread of civil war. The State had an international responsibility and would be likely to deliberate before provoking international disputes, whereas individuals and private organizations might have no such scruples.

55. He agreed with the representatives of Mexico and the United Kingdom who had stated, at the 300th meeting, that to permit individuals to lodge complaints might damage the prestige of national courts and even set up conflicting jurisprudence. If it was objected that the Council of Europe granted the right of petition to individuals, it must be noted that the State against which the complaint was lodged had the option of authorizing the acceptance or rejection of such a petition. It would be more reasonable to specify that petitions by individuals could not be received than to leave the provision so vague that individuals might lodge petitions, only to have them rejected.

56. The suggestion that the right of individual petition might be established in a separate protocol implied an excessively dangerous innovation in international law. To encourage individuals to petition against the States of which they were nationals would be premature. The idea of reciprocity had been mooted; but it was not at all clear with what relevance. That problem required very much more study, and the opinions of the governments should be requested.

57. The definition of the competence of the proposed human rights committee in articles 38 to 41 inclusive could be accepted; but nothing further should be added. The procedure was more similar to that adopted in the case of disputes between States than to a judicial process; the opinion of the committee could not be regarded as a verdict, as no sentence was provided or possible.

58. The wisdom of restricting the functions of the proposed committee to mediation was, therefore, obvious. It would avoid such futilities as had arisen in the case of the complaint of the violation of human rights and fundamental freedoms in Bulgaria, Hungary and Romania. Moral pressure resulting from publicity would undoubtedly force greater respect for human rights.

59. The provision that States should adapt their own legislation to the provisions of the international covenant was already a considerable step forward; further steps towards the attainment of an ideal not feasible in existing circumstances would be premature.

60. Mr. NORIEGA (Mexico) took exception to the Chinese representative's implication that under-developed countries were less able than advanced countries to ensure the observance of human rights. Retarded economic development did not presuppose cultural backwardness and he was quite unable to accept the idea that the richer nations had a higher moral sense than the poorer ones.

61. He regretted that article 1 of the draft covenant had not been brought into the discussion of measures of implementation, since the obligations which the signatory States would undertake by accepting that article — and undertake in perfect good faith — were the crux of the whole subject of implementation.

62. Mr. CHANG (China) replied that he had not intended to convey the idea that economically under-developed countries would be less willing or able to ensure observance of human rights than the advanced countries; he had meant merely that it would be more difficult for them to provide such material equipment required for the protection of human rights as schools and courts.

63. AZMI Bey (Egypt) observed that States which signed the covenant in good faith need have no fear of any form of control; consequently, the Egyptian delegation was ready to accept the establishment of a permanent human rights committee, a court to sanction the committee's findings, or any other provision that might seem necessary.

64. In the view of his delegation, no complaints from any source should be rejected. Due care should, however, be taken to prevent the human rights committee from being swamped by frivolous complaints from individuals. Since reserving the right of individual petition to non-governmental organizations would exclude a number of other organizations vitally concerned with human rights, he would propose a solution already adopted by another organ of the United Nations in another connexion: the right of petition should be given neither to individuals nor to non-governmental organizations *per se*, but to duly constituted associations or groups of individuals in each country.

65. The CHAIRMAN stated that the debate on the articles on implementation was concluded.

66. The Committee might proceed to consider such resolutions concerning the draft first international covenant on human rights and measures of implementation as were already before it.

67. Mr. TEIXEIRA SOARES (Brazil) recalled that under rule 119 of the rules of procedure proposals should not, as a general rule, be discussed unless copies of them had been circulated twenty-four hours earlier.

68. The CHAIRMAN remarked that at its meeting the following day, the Committee would have several resolutions before it which had been handed in early enough to comply with that rule.

69. The time limit for other proposals would still be 3 p.m. on 2 November 1950.

70. Mr. AZKOUL (Lebanon) moved the adjournment of the meeting.

The motion was adopted by 23 votes to 6.

The meeting rose at 5.25 p.m.

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