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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 A/C.3/L.76) (*continued*)

[Item 63]*

DRAFT RESOLUTION SUBMITTED BY BRAZIL, TURKEY AND THE UNITED STATES OF AMERICA (A/C.3/L.76) *(continued)*

1. The CHAIRMAN stated that the Egyptian amendment (A/C.3/L.108) proposing the insertion of a new sub-paragraph (*f*) in paragraph 2 of the joint draft resolution (A/C.3/L.76) could not be accepted, as it had been submitted after the agreed time limit had expired. It was a new amendment, not a sub-amendment such as that which had been submitted by the Iraqi delegation.

2. Mr. DE LACHARRIERE (France) explained his vote with regard to the ruling made by the Chairman at the 313th meeting. He had not challenged that ruling but he had voted against it because the joint Greek and New Zealand amendment (A/C.3/L.83/Rev.1) had not been incompatible with the Yugoslav amendment (A/C.3/L.92) to paragraph 2 (*e*), which had been adopted.

3. He regretted the interpretation of rule 129 of the rules of procedure on which the Chairman had based his ruling and was equally sorry that the Committee could not act upon the Egyptian amendment, with the substance of which he and other delegations were in agreement.

4. Mr. DAVIN (New Zealand) had voted against the Yugoslav amendment to paragraph 2 (*e*) of the basic text because he had felt that it was wrong to give specific instructions concerning the inclusion of economic, social and cultural rights to the Commission on Human Rights at a time when its agenda was already overburdened with the reconsideration of the first eighteen articles of the draft covenant on human rights. The completion of the draft covenant might have been set back for years as a result of the adoption of that amendment.

5. The Yugoslav amendment was inconsistent with paragraph 2 (*b*), already adopted at the 306th meeting, inasmuch as it instructed the Commission on Human Rights to consider specific matters. Its form, too, beginning as it did with a recital, was totally inconsistent with the form of the remainder of the draft resolution.

6. Mr. MENDEZ (Philippines) explained that he had voted against the USSR amendment (A/C.3/L.96) because there had been no debate on its substance. A separate vote on each paragraph, which had been suggested at the 313th meeting, would not have been a substitute for such debate, but would actually have worked against the interest of the USSR delegation.

7. In any case, the USSR amendment had by no means exhaustively enumerated the desirable rights, and some of the rights mentioned in it would in fact be nullified by the absence of others. There was little use in guaranteeing the right to life unless the concomitant rights to the enjoyment of the fruits of individual labour and to protection against expropriation without due process of law were equally guaranteed.

8. The CHAIRMAN called for a vote on paragraph 2 (*f*) of the joint draft resolution (A/C.3/L.76).

That paragraph was adopted by 43 votes to none.

9. The CHAIRMAN drew attention to the amendments to paragraph 2 (*g*) submitted by the delegations of Chile (A/C.3/L.81), Ethiopia and France (A/C.3/L.78), Israel (A/C.3/L.91/Rev.1 and Rev.1/Corr.1), Uruguay (A/C.3/L.93) and the USSR (A/C.3/L.96). Those amendments were recapitulated in document A/C.3/L.109.

10. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) observed that his delegation's amendment (A/C.3/L.96) did not bear upon the joint draft reso-

* Indicates the item number on the General Assembly agenda.

lution (A/C.3/L.76)—the document immediately under discussion—but rather upon the text of the draft international covenant.

11. It represented a clear reply to the question concerning the adequacy of the measures of implementation asked by the Economic and Social Council: they were entirely inadequate. The only effective way to safeguard the rights embodied in the draft covenant would be to combine in each article the definition of the right and the provisions for its implementation, so that the ratifying States would thereby be bound to observe the provisions of every article. The approach to the question expressed in the USSR proposal was the only realistic one possible.

12. The State alone could and should ensure the protection of the rights set forth in the draft covenant, but, particularly when dealing with economic, social and cultural rights, due attention must be paid to the particular conditions prevailing within the country concerned. The provisions of the existing draft articles 19 to 41 would encroach on the sovereignty of States and constitute an intervention in their domestic affairs, in violation of Article 2, paragraph 7, of the Charter of the United Nations.

13. The Israel and Uruguayan amendments were unacceptable because they would merely carry the provisions of articles 19 to 41 one step further.

14. Mr. ALTMAN (Poland) observed that the covenant on human rights would have treaty status, and that would mean that States would have to supplement their domestic law wherever the provisions of any of the articles were not already incorporated in it. That was no new principle. Hence, the question of the methods of implementation was a cardinal one. The fact that there should be sanctions to penalize breaches of international conventions was universally accepted.

15. With regard to the covenant, every State would have to accept its provisions, in its own interest, because it was its duty to do so, because it was bound to respect its obligations, and because it would be afraid of the consequences of violating it. The methods of implementation set forth in articles 19 to 41 were wholly inadequate for that purpose. No State should be able to claim that it was prevented by its domestic legislation from fully implementing the covenant's provisions. The human rights committee suggested therein would weaken rather than strengthen the covenant by enabling States to evade direct responsibility for breaches of the covenant. The proposals both for a human rights committee and for some kind of office of an attorney-general were completely unrealistic; while the reports to which the Uruguayan amendment referred would inevitably be filled only with expressions of regret at the existence of violations, and of hope for beter conduct in the future.

16. He would therefore support the USSR amendment (A/C.3/L.96).

17. Mr. KOUSSOFF (Byelorussian Soviet Socialist Republic), having carefully studied all the amendments presented to paragraph 2 (*g*), was able to support only the USSR amendment. The method advocated by the USSR representative was the only one that could ensure effective implementation of the covenant.

18. With reference to the remaining amendments, he would comment only on the one proposed by Uruguay (A/C.3/L.93), as representing the most radical attempt to intervene in the domestic affairs of States. The course of action suggested was utterly wrong and should be rejected by the Committee. There was, moreover, no need for any organ of control, provided the covenant were so drafted as to safeguard each right even while affirming it.

19. Mrs. ROOSEVELT (United States of America) could support the Chilean (A/C.3/L.81), Israel (A/C.3/L.91/Rev.1 and Rev.1/Corr.1) and Uruguayan (A/C.3/L.93) amendments, as they embodied matters which could properly be considered by the Commission on Human Rights with a view to making recommendations to the General Assembly at its sixth session. Such support would not of course prejudge the position which the United States delegation would take with regard to their substance either in the Commission on Human Rights or at the sixth session of the General Assembly.

20. The USSR representative had stated that he wished measures of implementation to be included in the draft covenant, but had also proposed the deletion of draft articles 19 to 41. He thus appeared to be stressing the willingness of his own government to implement the covenant within its own territory, in accordance with draft article 1, paragraph 1. That, however, was not sufficient; it was essential that there should also be international machinery for receiving complaints against alleged violations of the covenant. That machinery the USSR representative appeared to be unwilling to accept on the ground that it might constitute an intervention in the domestic affairs of States. The covenant was a treaty and its validity depended upon the willingness of States to adhere to it. Any State prepared to adhere should also be in favour of international machinery for hearing complaints.

21. In her opinion, the Chilean, Israel and Uruguayan amendments were not substitutions for paragraph 2 (*g*) of the basic text, but constituted additions, whereas the USSR amendment might be regarded as a proposal for deletion.

22. Mr. SAVUT (Turkey) thought that the USSR amendment was not incompatible with the provisions of paragraph 2 (*g*), as the question what body would examine petitions could still be left to the Commission on Human Rights even if the USSR amendment were adopted.

23. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) observed that the question of petitions was irrelevant to the substance of the USSR amendment.

24. The CHAIRMAN thought that it would simplify the Committee's work if action were taken on the USSR amendment after the other amendments had been disposed of.

25. Mr. PAZHWAK (Afghanistan) considered the Uruguayan amendment useful, but believed it to be premature, because in it points upon which the Committee had not yet decided—such as the nature of the human rights committee—were taken for granted. The close relation between the powers of the proposed human rights committee and exisitng domestic legislation would also give rise to difficulties. He hoped that an advisory opinion from competent legal authorities concerning the possible effects on domestic law could be circulated before the sixth session. He would therefore abstain from voting for the Uruguayan proposal.

26. He could not vote for the basic text of paragraph 2 (*g*) because the reference to separate protocols weakened the covenant, owing to the fact that the non-self-governing countries, which most sorely needed the protection of human rights, would be unable to accede directly to them.

27. The Chilean amendment might perhaps offer the solution.

28. Mr. PRATT DE MARIA (Uruguay) thought that Article 2, paragraph 7, of the United Nations Charter was not applicable to his amendment, as the emphasis in that paragraph fell upon the word "essentially", and that any matter which became, by treaty, a matter of international law was no longer "essentially" within the domestic jurisdiction of a State party to the treaty.

29. Mr. NORIEGA (Mexico) thought that there would not be sufficient time to discuss all the amendments thoroughly and that the Commission on Human Rights might be unable to consider all of them, as some of them might not be adopted by the Committee.

30. Hence, for purely procedural reasons, he proposed the addition of the following phrase at the end of paragraph 2 (*g*) of the basic text:

> "to take into consideration in their studies of questions relative to petitions and implementation the proposals presented by the delegations of Chile, Ethiopia and France, Israel, Uruguay, in documents A/C.3/L.81, A/C.3/L.78, A/C.3/L.91/Rev.1 and Rev.1/Corr.1, A/C.3/L.93; and . . .".

31. He would abstain from voting on the USSR amendment (A/C.3/L.96) because it was impossible at that stage to prejudge the final form of articles 19 to 41.

32. Mr. ZELLEKE (Ethiopia), Mr. DE LACHARRIERE (France) and Mr. PRATT DE MARIA (Uruguay) accepted the Mexican amendment.

33. Mr. CAÑAS FLORES (Chile) also accepted that amendment, but could not agree to the idea of an attorney-general, proposed in the Uruguayan amendment, because such an official might become involved in controversy similar to that which had arisen concerning the Secretary-General of the United Nations.

34. Mr. KOHN (Israel) observed that his delegation's amendment (A/C.3/L.91/Rev.1 and Rev.1/Corr.1) differed from paragraph 2 (*g*) of the joint draft resolution inasmuch as the latter referred to separate protocols whereas his delegation wished the question of petitions to be included in the draft covenant itself.

35. The reference to non-governmental organizations in sub-paragraph (i) of the Israel amendment had been made because it was to be apprehended that States, in an endeavour to avoid aggravating international tension, would be reluctant to lodge complaints or else would transform humanitarian questions into political ones. There might be a danger that the covenant would remain a dead letter so far as implementation was concerned if the right of complaint were limited exclusively to States. That was why that right should be accorded to non-governmental organizations in the covenant rather than in separate protocols. Abuse of that right by irresponsible organizations would be obviated as it would be restricted exclusively to such of those enjoying consultative status with the Economic and Social Council as were included in a special list drawn up for that purpose.

36. Mr. LESAGE (Canada) opposed the Mexican amendment, because it would be tantamount to evading the question concerning the adequacy of the measures of implementation asked by the Economic and Social Council and to throwing the responsibility back upon the Commission on Human Rights without giving it the requisite basic policy decision.

37. Mr. AZKOUL (Lebanon) agreed with the Canadian representative that the Committee should give a clear indication to the Commission on Human Rights that it considered the articles on implementation inadequate.

38. Since the Mexican amendment, useful as it was, did not go far enough in that direction, he suggested that it might be preceded by the following text: "*Considering* that it is not opportune to reserve for governments alone the right of complaint in cases of violation of the covenant, recommends to the Commission . . .".

39. Such a text would still leave the Commission free to decide what other provisions it should draft with respect to the right of complaint.

40. Mr. NORIEGA (Mexico) replied that the Committee's previous decisions that the first eighteen articles of the covenant were inadequate and that articles dealing with economic, social and cultural rights should be included made it impossible to decide just then on the adequacy of the measures of implementation, since the Committee could not know what provisions there would be to be implemented. By approving the Mexican amendment, the Committee would be tacitly informing the Commission that the measures of implementation required further consideration.

41. He was not, however, prepared to accept the Lebanese amendment, with its explicit statement of principle. Many other delegations might be in a similar position because they had no instructions from their government on that point.

42. Mr. TEIXEIRA SOARES (Brazil) supported the Mexican proposal, but not the Lebanese amendment to it. His delegation was strongly in favour of the substance of the Israel amendment (A/C.3/L.91/Rev.1 and Rev.1/Corr.1).

43. Mr. CABADA (Peru) also supported the Mexican amendment. While he agreed that referring the various amendments to the Commission on Human Rights implied that the articles dealing with implementation were inadequate, he did not think that the Committee should prejudge the Commission's attitude towards the right of complaint, and that would be the result of adopting the Lebanese amendment.

44. His delegation was not in full agreement with all the provisions of articles 19 to 41; nevertheless it could not accept the complete deletion of all articles dealing with implementation and would therefore vote against the USSR amendment.

45. He shared the Chilean representative's objections to the Uruguayan proposal to create an office of attorney-general.

46. Mr. KOHN (Israel) was unable to support the Mexican amendment, since it apparently meant that the

various amendments to paragraph 2 (*g*) would be referred to the Commission without any basic policy decision by the Committee.

47. The question of the right of complaint, dealt with in sub-paragraph (i) of the Israel amendment (A/C.3/L.91/Rev.1 and Rev.1/Corr.1), was of outstanding importance. He was convinced that States would hesitate to bring complaints against other States for fear of creating international friction; unless the right of complaint were also given to non-governmental organizations, implementation would remain a dead letter. He therefore supported the Lebanese amendment, under which the Committee would accept in principle that the right of complaint should not be reserved for States alone, while allowing the Commission on Human Rights to work out the details.

48. Paragraph 2 (*g*) of the joint draft resolution would postpone action on that subject indefinitely; he therefore wished to know whether the sponsors of that resolution would accept the insertion of the words "provisions to be inserted in the draft covenant or in" before the words "separate protocols".

49. Mr. TEIXEIRA SOARES (Brazil), Mr. SAVUT (Turkey) and Mrs. ROOSEVELT (United States of America) accepted that insertion.

50. Mr. LAMBROS (Greece) was prepared to accept the Mexican proposal, but not the Lebanese amendment to it. The Greek delegation was not happy about the reference to the right of petition in paragraph 2 (*g*) of the joint draft resolution. The right of petition should be most welcome to everybody, but under one condition: that individuals and organizations using that right would indeed be private, that they would not be mere cloaks for something else. Unfortunately, in the existing state of the world, there was in most free countries a "fifth column" which received its instructions from abroad and which would misuse the right of complaint if it were granted to private individuals and organizations.

51. The Greek delegation would vote in favour of paragraph 2 (*g*) as amended by the Mexican proposal, since it in no way committed the Commission on Human Rights in favour of the right of petition, and left the Commission full freedom to consider on their merits the proposals referred to it.

52. Mr. DE LACHARRIERE (France) agreed with the Greek representative that the right of petition might easily be abused. Under the Mexican amendment, the Commission would be free to use its own judgment and to take into account such comments as might be received from governments.

53. He wished to make it clear that the purpose of the amendment submitted jointly by Ethiopia and France (A/C.3/L.78) was to ensure the establishment of a body which would be as apolitical as was humanly possible, so that the rights of individuals would be protected by an impartial organ unaffected by national interests.

54. Mr. KHOCHBIN (Iran) was also in favour of the Mexican amendment.

55. He was unable to accept the substance of either the Israel (A/C.3/L.91/Rev.1 and Rev.1/Corr.1) or the Chilean (A/C.3/L.81) amendments, as they would involve intervention in the domestic affairs of States and were therefore contrary to Article 2, paragraph 7, of the Charter.

56. Mr. AZKOUL (Lebanon) remarked that the very delegations which had been anxious to give clear-cut answers to the earlier questions concerning the covenant were reluctant to reply to the most important question of all—whether the articles dealing with the measures of implementation were adequate. He still felt that an answer should be given. The right of complaint must not be limited to States since that could not adequately protect the rights of individuals.

57. The argument that delegations might not be able to vote for his amendment because they had no instructions from their governments was, however, valid, and he therefore withdrew the amendment.

58. The fact of the Committee's referring to the Commission on Human Rights the various proposals dealing with implementation and the right of complaint would in itself be a clear indication that the Committee did not find the existing provisions adequate.

59. Mr. NORIEGA (Mexico) said that his amendment was purely procedural, and that he was not passing judgment on the substance of any of the proposals referred to the Commission on Human Rights for consideration.

60. The CHAIRMAN, in reply to a question by the representative of ISRAEL, said that if the Mexican amendment were adopted, the entire text of the Israel amendment (A/C.3/L.91/Rev.1 and Rev.1/Corr.1) would be transmitted to the Commission on Human Rights.

61. Mrs. MENON (India) pointed out that during the general debate a number of speakers had been opposed to the idea of separate protocols contained in paragraph 2 (*g*) of the joint draft resolution.

62. She therefore asked that when the paragraph was put to the vote the words "or in separate protocals" might be voted on separately.

63. Lord MACDONALD (United Kingdom) wished to have an opportunity to vote on the text of paragraph 2 (*g*) separately. On the suggestion of Mr. CABADA (Peru) and Mrs. ROOSEVELT (United States of America), he requested that, if the Mexican amendment were adopted, the resulting text should be put to the vote in two parts, the first part being the original text of paragraph 2 (*g*).

64. The CHAIRMAN put to the vote the proposal by the Mexican representative that the following text should be added to paragraph 2 (*g*) of the joint draft resolution (A/C.3/L.76):

> "to take into consideration, in their studies of questions relative to petitions and implementation, the proposals presented by the delegations of Chile, Ethiopia and France, Israel, Uruguay in documents (A/C.3/L.81, A/C.3/L.78, A/C.3/L.91/Rev.1/Corr.1, A/C.3/L.93; and . . .".

65. At the request of Mr. KAYALI (Syria), the CHAIRMAN put the Mexican amendment to the vote separately in respect of the reference to each of the sponsors of the above-mentioned proposals.

In so far as it referred to the Chilean proposal (A/C.3/L.81), the amendment was adopted by 24 votes to 11, with 11 abstentions.

In so far as it referred to the joint Ethiopian-French proposal (A/C.3/L.78), the amendment was adopted by 33 votes to 8, with 5 abstentions.

In so far as it referred to the Israel proposal (A/C.3/L.91/Rev.1 and Rev.1/Corr.1), the amendment was adopted by 21 votes to 16, with 10 abstentions.

In so far as it referred to the Uruguayan proposal (A/C.3/L.93), the amendment was adopted by 21 votes to 16, with 8 abstentions.

The amendment as a whole was adopted by 28 votes to 9, with 8 abstentions.

66. The CHAIRMAN put to the vote the following part of paragraph 2 (*g*) of the joint draft resolution, which included the amendment submitted by the representative of Israel and accepted by the sponsors of the joint proposal:

"To proceed with the consideration of provisions to be inserted in the draft covenant".

That part was adopted by 26 votes to 10, with 7 abstentions.

67. The CHAIRMAN put to the vote the words "or in separate protocols".

Those words were adopted by 21 votes to 10, with 13 abstentions.

68. The CHAIRMAN put to the vote the remainder of paragraph 2 (*g*) with the exception of the Mexican amendment which had been adopted earlier.

The remainder of the sub-paragraph was adopted by 26 votes to 11, with 7 abstentions.

69. The CHAIRMAN put to the vote sub-paragraph 2 (*g*) of the joint draft resolution, including the Israel amendment which the sponsors had accepted, but not the Mexican amendment which had been adopted earlier.

That part of sub-paragraph 2 (g) *was rejected by 21 votes to 8, with 13 abstentions.*

70. Mr. ZELLEKE (Ethiopia), Mr. ROY (Haiti), Mr. BOKHARI (Pakistan), Mr. MENDEZ (Philippines), Mr. KAYALI (Syria), Mr. NORIEGA (Mexico), Mr. CABADA (Peru) and the CHAIRMAN discussed the significance of the last vote.

71. Mr. ROY (Haiti) proposed that, under rule 122 of the rules of procedure, the Committee should reconsider its previous decision to vote separately on the original text of paragraph 2 (*g*).

The motion for reconsideration was adopted by 28 votes to 13, with 3 abstentions.

72. The CHAIRMAN accordingly put to the vote the whole of paragraph 2 (*g*), including the Mexican amendment adopted earlier.

The sub-paragraph, as amended, was adopted by 24 votes to 11, with 11 abstentions.

73. Mr. RODRIGUEZ ARIAS (Argentina) wished to explain his vote. He had abstained in the vote on paragraph 2 (*g*) because the Mexican amendment, which had become an integral part of the sub-paragraph, specifically referred to certain proposals which his delegation would have been obliged to oppose if they had been put to the vote separately, in view of the fact that they tended to develop machinery for judicial interference by the United Nations in the domestic affairs of States, without providing the safeguards assuring independence and equity contained in the draft proposed by the Commission on Human Rights.

74. The attitude of his delegation was in no way inconsistent with his government's steadfast support of the right to petition, a right which was guaranteed in article 26 of the Argentine Constitution.

75. The CHAIRMAN requested the Committee to take a decision on point 6 of the USSR proposal (A/C.3/L.96) to insert, after paragraph 2 (*e*) of the joint draft resolution (A/C.3/L.76), a sub-paragraph calling for the deletion of articles 19 to 41 from the draft covenant on human rights.

76. Mr. AZKOUL (Lebanon) explained that, although he would vote against the USSR amendment, that fact was not to be construed as implying unconditional approval of articles 19 to 41.

77. Mr. CAÑAS FLORES (Chile) requested that the vote should be taken by roll-call.

A vote was taken by roll-call.

In favour: Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Ukranian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Against: Australia, Belgium, Brazil, Canada, Chile, China, Cuba, Denmark, Dominican Republic, Ecuador, Ethiopia, France, Greece, Guatemala, Haiti, Israel, Lebanon, Netherlands, New Zealand, Norway, Peru, Philippines, Sweden, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Afghanistan, Argentina, Burma, Egypt, India, Iran, Iraq, Mexico, Pakistan, Saudi Arabia, Syria, Yugoslavia.

The amendment was rejected by 29 votes to 5, with 12 abstentions.

The meeting rose at 6 p.m.

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