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Draft international covenant on human rights and measures of implementation (A/1883, A/1884 (chapter V, section I), E/1992, E/2057 and Add.1 to 5, E/2059 and Add.1 to 8, E/2085 and Add.1, A/C.3/559, A/C.3/L.88, A/C.3/L.190) (continued)

[Item 29]*

1. Mr. MUFTI (Syria), speaking under rule 114 of the rules of procedure, pointed out to the Netherlands representative that he welcomed constructive criticism of any text he submitted. The fact that the Syrian amendment (A/C.3/L.221) was useful had been proved by the fact that certain delegations which had criticized it had nevertheless voted for it.

DRAFT RESOLUTION SUBMITTED BY GUATEMALA (A/C.3/L.190)

2. The CHAIRMAN asked the Committee to discuss the Guatemalan draft resolution (A/C.3/L.190) on the inclusion of provisions regarding reservations in the draft international covenant on human rights.

3. Mr. PAVLOV (Union of Soviet Socialist Republics), speaking on a point of order, observed that the situation had changed in the interval between the submission of the Guatemalan draft resolution and the decision adopted by the General Assembly at its 360th plenary meeting, on the proposal of the Sixth Committee, regarding the general question of reservations to multilateral conventions. If the Third Committee, which was less qualified than the Sixth Committee to deal with legal matters, took any decision that conflicted with the Sixth Committee's recommendation, the position would be awkward in the extreme. Perhaps the Guatemalan delegation would be willing to let the Committee defer consideration of its draft resolution until the Sixth Committee's views could be ascertained.

4. Mr. BUNGE (Argentina) said that the General Assembly's decision affected only the general principle of reservations to multilateral conventions; it might well not affect the particular case raised in the Guatemalan draft resolution.

5. Mr. GARCIA BAUER (Guatemala) wished to revise his draft resolution (A/C.3/L.190) to take account of the Committee's decision that two covenants should be drafted: in the first paragraph of the preamble, the word "covenant" should be replaced by the word "covenants" and, in the operative part, the word "covenant" should be replaced by the words "two covenants".

6. The Guatemalan draft resolution had been submitted before the Sixth Committee had decided that provisions regarding reservations could be inserted in multilateral conventions. Specific proposals to that effect had been submitted to the Sixth Committee by the delegations of Argentina, Belgium, Denmark, Egypt, India, Iran, Israel, Lebanon, Mexico, Netherlands, Peru, Sweden, the United Kingdom and the United States of America,¹ which should therefore be able to support the draft resolution before the Committee.

7. The two covenants on human rights would be the first United Nations conventions to contain such reservations; the occasion should be auspicious. The International Law Commission had recommended the inclusion of such clauses at its third session.² The General Assembly had based its decision on that recommendation.

8. Mr. BEAUFORT (Netherlands) was in favour of the Guatemalan draft resolution, but proposed that the second paragraph of the preamble should be amended in the light of the resolution adopted by the General Assembly at its 360th plenary meeting. The matter

¹ See *Official Records of the General Assembly, Sixth Session, Sixth Committee*, 264th to 278th meetings, and *Annexes*, agenda item 49, document A/2047.

² *Ibid.*, Supplement No. 9, chap. II, para. 34.

* Indicates the item number on the General Assembly Agenda.

had been fully discussed by the International Law Commission, and the International Court of Justice had given an advisory opinion. Yet that advisory opinion had been handed down by a very small majority of the Court; the Court had intentionally limited it to the specific case of the Convention on the Prevention and Punishment of the Crime of Genocide and had equally intentionally avoided giving its opinion on reservations in general.²

9. The discussions in the Sixth Committee and in the International Law Commission had shown clearly enough that the significance of reservations would entirely depend on the nature of the conventions to which they were to be applied. The second paragraph of the preamble, therefore, might better read:

"Considering that the General Assembly in its resolution... (VI) has recommended that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them."

10. Mr. GARCIA BAUER (Guatemala) accepted that amendment.

11. Mr. DE ALBA (Mexico) could not accept the idea that reservations should directly affect the statement of fundamental human rights, but they could be applied to the measures of implementation, provided the latter were embodied in a separate instrument. The time was not yet ripe for the rigid enforcement of the measures of implementation, which would have a standing somewhat similar to that of ILO conventions—an inspiration to domestic legislation, but not yet mandatory in themselves. Every country could introduce some of the provisions of the proposed covenant on human rights into its domestic legislation, but it might well register reservations with regard to such measures of implementation as the proposed petitions procedure, which would be better placed in a protocol than in one of the covenants.

12. Mrs. AFNAN (Iraq) could not see that the Guatemalan draft resolution duplicated the General Assembly's decision, which merely recommended that the admissibility or non-admissibility of reservations should be considered. As the Committee had voted that there should be two draft covenants, but had not decided whether the same preamble should or should not apply to both or that an article making the covenants enforceable in Non-Self-Governing Territories should appear in both, she was at a loss to know what features the two covenants would or would not have in common and to what articles the proposed reservations might apply.

13. Her delegation would abstain, unless further light was thrown on the points she had raised.

14. Mr. LESAGE (Canada) supported the Guatemalan draft resolution.

15. In the Sixth Committee three trends of opinion had emerged: that of all the American countries with the exception of Canada, that of the USSR and its supporters and that shared by the Canadian, French and United Kingdom delegations. The decision taken by the Sixth Committee might not have been entirely a wise one; every convention should embody a provision admitting reservations.

16. Mr. CASSIN (France) was not usually in favour of reservations to international instruments, but thought that in the specific case of a covenant on human rights reservations might be desired by some governments. Although the Commission on Human Rights should be free to examine the matter more thoroughly, the Committee would be well advised to give such instructions as those embodied in the Guatemalan draft resolution, which was entirely consonant with the letter and spirit of the more general decision already taken by the General Assembly.

17. Mr. AZKOUL (Lebanon) pointed out that the incorporation of the Netherlands oral amendment would create a discrepancy between the preamble to the Guatemalan draft resolution and its operative part, since the amendment restated the General Assembly's recommendation to consider the advisability of including reservation clauses in the covenant, whereas the operative part of the draft resolution proposed that the Commission on Human Rights should be instructed to prepare drafts of such clauses.

18. In view of the fact that the Guatemalan text went further than the General Assembly resolution, it seemed to be undesirable for the Third Committee to take a vote on the matter until it had studied concrete articles of the draft covenant and the nature of the obligations which might or might not call for the inclusion of reservation clauses, especially in view of the special character of the draft covenant. It might therefore be advisable to request the Commission on Human Rights to submit two alternative texts, providing both for the admissibility and the non-admissibility of reservations.

19. Mr. NAJAR (Israel) stressed the necessity of having complete draft covenants prepared before the seventh session of the General Assembly. Unless those documents were submitted to the General Assembly in the form which would best promote their signature by governments, the Third Committee's work would have been wasted. The Guatemalan draft resolution confronted the Committee with its real responsibilities, but he thought it might be improved by stating in the first paragraph of the preamble that the General Assembly considered it desirable to study the extent to which the covenants should include provisions on reservations and by stating in the operative part that the Commission should be instructed to prepare the clauses concerned for possible inclusion in the covenants.

20. Mr. GARCIA BAUER (Guatemala) did not consider that the oral amendments to his draft resolution proposed by the Lebanese and Israel representatives substantively altered his text.

² See *Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 15 (A/1874, p. 29)*.

21. The Lebanese representative seemed to be reluctant to reach a concrete decision; nevertheless, the Lebanese delegation in the Sixth Committee had made a proposal⁴ which was substantively similar to the Guatemalan draft resolution.
22. He considered that the Israel oral amendment would vitiate the Guatemalan draft resolution, since the Commission on Human Rights had to make a decision on whether or not reservations would be admissible, in order that governments might be fully aware of their commitments in signing the covenants.
23. Mr. GREEN (United States of America) would support the Guatemalan draft resolution as amended orally by the Netherlands representative.
24. Nevertheless, he considered that the Commission on Human Rights should be left every latitude in the matter and he would therefore support the draft resolution with the incorporation of the Israel oral amendment, if it were accepted.
25. Mr. CASSIN (France) was in favour of the Guatemalan draft resolution in principle, but asked the Guatemalan representative whether he would not agree to modify his text, in view of the doubts that had been expressed, and especially in view of the Lebanese representative's reference to the special nature of the draft covenants.
26. Mr. VALENZUELA (Chile) stated that his delegation was opposed to the increasing widening of reservation clauses, which tended to reduce the number of commitments which were binding on States. It was especially inadmissible to open the door for any evasions in the case of the draft covenants, which could not be compared with other multilateral agreements. Moreover, that danger had been aggravated by the decision to draft more than one covenant. He thought it advisable to draft a clause on the non-admissibility of reservations only, and would therefore abstain from voting on the Guatemalan draft resolution.
27. Mr. MUFTI (Syria) considered that, if the Commission on Human Rights were to recommend the admissibility of reservations, the latter should apply only to the articles on implementation.
28. If it were felt that a clause or clauses on reservations should be inserted in the draft covenant or covenants, with respect, for example, to economic, social and cultural rights, three conditions should be embodied in the directives given to the Commission: the provisional nature of reservations should be stressed; all reservations should be justified; and the reservations should in no case refer to civil and political rights which were immediately justiciable.
29. If the Guatemalan representative thought that the Commission should be given directives immediately, the General Assembly should be in a position to adopt a well-considered decision and the draft resolution should be amended accordingly.
30. Mr. AZKOUL (Lebanon) said that he agreed substantially with the Guatemalan representative's views, but wished to clarify the text of the draft resolution in order to avoid any misinterpretations. He asked the Guatemalan representative whether he would accept an oral amendment which would eliminate the discrepancy between the restatement of a provision of the General Assembly resolution on reservations to multilateral conventions and the existing operative part of the Guatemalan draft resolution.
31. Mr. GARCIA BAUER (Guatemala) pointed out that the Syrian representative's suggestions related to substance and, in the terms of the Guatemalan draft resolution, would be studied by the Commission on Human Rights.
32. He recalled the position taken by the Lebanese representative in the Sixth Committee⁵ and pointed out that if the Lebanese oral amendment were accepted the problem of reservations would return to the General Assembly and then again to the Commission on Human Rights.
33. In reply to the Canadian representative, he pointed out that, if there were no provisions on reservations in the draft covenant, reservations would automatically be admissible. It was therefore essential to take a decision immediately; there was no question of prejudging the Commission's decision, but the problem should be faced squarely by the General Assembly at its seventh session.
34. Mr. HOWARD (United Kingdom) would support the Guatemalan draft resolution as amended orally by the Netherlands representative.
35. Although he appreciated the Lebanese representative's argument concerning the discrepancy between the General Assembly provision and the operative part of the draft resolution, he thought that the existing text of the draft gave the Commission on Human Rights sufficient latitude to take an appropriate decision on the matter.
36. Mr. PLEIC (Yugoslavia) thought the Guatemalan proposal premature; it would be better to postpone discussion of the whole question until the seventh session of the General Assembly, when the entire text of the draft covenant would be ready for study by the Third Committee.
37. Mr. PAVLOV (Union of Soviet Socialist Republics) wondered whether the Committee was competent to instruct the Commission on Human Rights to insert in the draft covenant clauses on the admissibility or non-admissibility of reservations; that subject, primarily a legal one, normally came within the purview not of the Third Committee, but of the Sixth Committee, which should, he thought, be consulted on the matter.
38. He could not vote on the amended Guatemalan draft resolution, incorporating the Netherlands proposal, until it had been circulated in writing, as prescribed by the rules of procedure. The Netherlands amend-

⁴ See *Official Records of the General Assembly, Sixth Session, Sixth Committee, 264th meeting.*

⁵ *Ibid.*

ment did not really reconcile the draft resolution with the General Assembly resolution on the subject of reservations to international conventions.

39. The CHAIRMAN did not think it necessary to consult the Sixth Committee, which was on the verge of completing its work. Paragraph 1 of the operative part of the resolution adopted by the General Assembly at its 360th plenary meeting made it clear that the question of the competence or non-competence of the Third Committee did not arise.

40. Mr. NAJAR (Israel) thought there was some misunderstanding about the matter of competence. The Third Committee was competent to take up the question of reservations to conventions by virtue of the fact that one of the items on the agenda allocated to it by the General Assembly was the draft covenant on human rights, which included certain legal implications. Similarly, the Commission on Human Rights, whose terms of reference were derived from the Third Committee, was authorized to deal also with the legal aspects of the covenant it was called upon to draft.

41. He would support the Guatemalan draft resolution, with or without the drafting changes he had suggested. He thought the work of the Commission on Human Rights would be expedited if it were asked to prepare a text containing a clause on the question of reservations, though without, of course, taking any decision as to whether such reservations should or should not be admissible.

42. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) thought that the time to decide whether or not the covenant should contain provisions on reservations would be later, when the draft was completed and up for consideration by the Third Committee. To decide that question at the current stage would mean prejudging the nature of the covenant.

43. His delegation would therefore vote against the Guatemalan draft resolution.

44. Mr. PAZHWAQ (Afghanistan) thought the representative of Chile had raised an important question of principle when he had said that the covenant on human rights, as essentially different in character from other conventions, should be accorded different treatment.

45. He thought that the Commission on Human Rights should be asked at the current stage only to make a recommendation on the desirability of including in the covenant clauses relating to reservations; he hoped the representative of Guatemala would accept his suggestion.

46. In principle, the delegation of Afghanistan would support the draft resolution (A/C.3/L.190). He did not think the Third Committee could consider the amendments to that draft resolution until they had been circulated in writing.

47. Mrs. AFNAN (Iraq) said that to accept reservations to an international covenant on human rights would be tantamount to compromising the international

conscience. She asked whether such reservations would be made on behalf of the signatory States, or on an individual basis. She assumed that the Guatemalan draft resolution did not imply either that reservations should be admissible, or that they should not. She did not think the time had yet come for discussion of the important question of principle involved.

48. Mr. HAJEK (Czechoslovakia) thought that the first step was for the Commission on Human Rights to prepare a draft covenant; after that a decision should be taken on the manner in which the resolution dealing with the question of reservations in general adopted by the General Assembly at its 360th plenary meeting should be applied to the covenant. That could not be done until the seventh session of the General Assembly, when the text of the draft covenant would be before the Third Committee.

49. Mr. GARCIA BAUER (Guatemala) rejected the Afghan suggestion, which was similar to the suggestions made by Lebanon and Israel.

50. He agreed with the representative of Iraq that the question of principle was not being decided in his draft resolution (A/C.3/L.190); he thought his draft resolution was entirely justified.

51. He considered that the points raised by the Ukrainian and Czechoslovak delegations might also be regarded as arguments in favour of the Guatemalan draft resolution.

52. Mr. ALEMAYEHOU (Ethiopia) said that his delegation agreed with the spirit of the Guatemalan draft resolution, and would therefore vote for it.

53. The General Assembly had adopted a resolution on reservations to multilateral conventions providing that, in the event of States ratifying with reservations, such ratifications with reservations had merely to be communicated, each individual State being responsible for applying such reservations. At the same time, however, the International Court of Justice had decreed that reservations would be acceptable only if they were compatible with the object of the convention concerned. In his opinion they were definitely not compatible with the object of the international covenant on human rights—a fact which he hoped the Commission would bear in mind. The danger was that, in view of the resolution adopted by the General Assembly at its 360th plenary meeting, each State would, unless the covenant contained specific instructions to the contrary, be able to make reservations.

54. He would vote for the Guatemalan draft resolution because it did not prejudge the issue, but left the Commission on Human Rights entirely free to decide, in the light of the statement made by the International Court of Justice and the discussion in the Third Committee, whether or not the covenant should contain provisions on the admissibility or non-admissibility of reservations.

55. He thought the International Court of Justice should make a study of the special case of the cove-

nant on human rights, and issue a statement to the effect that reservations were not admissible.

56. Mr. PAVLOV (Union of Soviet Socialist Republics) was not quite clear whether the revised Guatemalan draft resolution referred to "the covenant or covenants", like the revised Afghan amendment (A/C.3/L.209/Rev. 1) voted on at the 403rd meeting, or to "both" covenants. The Committee must

consider the implications of any such new wording before any more delegations explained their votes.

57. He therefore moved the adjournment of the meeting.

The motion was adopted by 20 votes to 15, with 6 abstentions.

The meeting rose at 11 p.m.