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Chairman: Mr. Jiří NOSEK (Czechoslovakia).

Aid to flood victims

1. Mr. RODRIGUEZ FABREGAT (Uruguay) recalled that a few days earlier the Chairman had expressed the sympathy of delegations for the victims of the natural catastrophes in certain countries. Costa Rica had just been struck by a terrible disaster. The greater part of the food-producing land had been ravaged by floods and the rice and banana harvests had been destroyed. The misfortune which had befallen Costa Rica called for a concrete expression of sympathy and solidarity on the part of all Members of the United Nations. He drew attention in that connexion to the attitude of the League of Nations towards the victims of natural catastrophes and to the decisions which the United Nations General Assembly had taken in various cases.

2. He believed that the Chairman would be speaking for all the members of the Committee if he drew the attention of the specialized agencies and UNICEF to the tragic situation in Costa Rica and invited them to give assistance there, particularly to those rendered homeless and to the women and children who were exposed to the rigours of weather. The United Nations Children's Fund should give Costa Rica the most effective possible aid; the United Nations would thereby be demonstrating the feeling of solidarity which all men had with the victims of natural catastrophes and which should be translated into concrete action rather than into mere declarations. His delegation therefore asked the Chairman to bring the matter to the attention of the specialized agencies.

3. Mr. NUÑEZ (Costa Rica) thanked the Uruguayan delegation for its initiative. It bore witness to a high sense of international solidarity and a deep understanding of human misfortune. He also thanked the Chairman and members of the Committee for briefly interrupting the consideration of the draft covenants on human rights in order to concern themselves with the disaster that had befallen Costa Rica. The losses caused by the catastrophe might seem small in absolute figures, but they were substantial for a country with a population of one million and a relatively limited economy. The entire rice harvest was lost. The banana plantations,

which were worked by a foreign company under a concession but from which the national economy profited greatly, had been ravaged. The inhabitants of the flooded areas had had to seek refuge in mountainous regions with a hard climate and were living in distressing circumstances. The aid of the specialized agencies, UNICEF and the technical assistance services would certainly bring substantial relief to the victims. He thought that the Third Committee would accept the Uruguayan representative's suggestion; the high authority of the General Assembly could not but encourage the agencies concerned to render assistance speedily and on a broad scale to Costa Rica in order to alleviate the tragic effects of the misfortune it had just suffered.

4. The CHAIRMAN said that on behalf of the Committee he would make the necessary arrangements to comply with the Uruguayan representative's suggestion.

It was so decided.

AGENDA ITEM 58

Draft international covenants on human rights (A/2714, A/2686, chapter V, section I, E/2573, A/C.3/574) (*continued*)

GENERAL DEBATE (*continued*)

5. U BA HITAY (Burma) paid a tribute to the Economic and Social Council and to its subsidiary organs, more particularly the Commission on Human Rights, for the untiring efforts they had exerted in formulating the draft covenants. The task that had been performed was colossal and its results memorable.

6. His delegation recalled, however, that it had suggested at the previous sessions that only one covenant should be drafted, embodying both the economic, social and cultural rights and the civil and political rights; it was still of the same opinion. There was no advantage in making an artificial distinction between two sets of rights which were closely linked and interdependent by devoting one instrument to each set. Since mankind as a whole was to exercise and enjoy the rights, there seemed to be no more grounds for separating them than for isolating the members of a family from one another.

7. The task of preparing the drafts as they then stood had been long and difficult. The provisions proposed covered many and various fields of human activity and it had been necessary to reconcile the drafts with the existing social structures of a large number of States with widely differing political institutions. It could be said that appreciable progress had been made in that respect. The drafts would still have to go through several further stages before they could seem acceptable to all or a majority of Member States and thus assume the universal character which was desirable. The Commission on Human Rights had therefore suggested (E/

2573, para. 39) to the Economic and Social Council that it should recommend to the General Assembly to give the drafts two separate readings at two consecutive sessions. In view of the decision taken by the Third Committee (A/C.3/L.409) his delegation would confine itself to making a few general observations, while reserving the right to speak on more specific points when the time came.

8. Divergences of opinion had become apparent in connexion with the right of property, the admissibility of reservations and the right of peoples to self-determination. With regard to the first of those questions, his delegation felt that the draft article submitted by the Sub-Committee (E/2573, para. 52), together with the amendments that had been proposed, might provide a basis of agreement; the wording could no doubt be improved in a manner acceptable to most of the Member States. At all events, the right to own property should be subject to certain limitations compatible with the principles of the Universal Declaration of Human Rights. He quoted in that connexion two passages (section 23, sub-sections 1 and 4) of the Constitution of Burma, one guaranteeing the right of private property and of private initiative in the economic sphere, and the other stipulating that property could be expropriated if the public interest so required, but only in the cases expressly prescribed by the law, which, moreover, prescribed the extent to which the owner should be compensated.

9. In regard to reservations, his delegation was for the time being inclined to take the middle path. If reservations were admitted at all, they should be admitted only in so far as they were compatible with the purposes of each convention and of the Universal Declaration of Human Rights and with the international character of the proposed instruments. If the right to make reservations were not limited, the effectiveness of the covenants would be diminished; the ideal would be a universal covenant without reservations but so conceived as to avoid conflicts with the municipal laws of the States; to that end the co-operation of all the parties concerned would be necessary. It seemed more desirable to exclude from the text the provisions which caused the difficulties in that respect than to admit reservations. The Member States should strive to be accommodating to that end.

10. His delegation agreed with the members of the Commission who held that the rights defined in the draft covenants could not in reality be exercised by all unless the right of peoples to self-determination was recognized and guaranteed in accordance with the fundamental principles of the Charter. His country approved in principle the recommendations and the draft resolutions referred to in paragraphs 333, 334 and 335 of the report of the Commission on Human Rights (E/2573). It urged the Economic and Social Council not to put off the consideration of that question indefinitely and not to delay unduly the adoption of the necessary measures of implementation. He was submitting his observations on the assumption that the article relating to the right of self-determination would be retained in the covenants.

11. He pointed out that the word "recognize" was used in all the articles except article 8 in part III of the draft covenant on economic, social and cultural rights (E/2573, annex D). In his view the word was well chosen

because it gave less operative force to the provisions and enabled them to be construed fairly liberally, which would assist in securing their general acceptance by the States. He understood that the articles in question merely expressed guiding principles and were not to be automatically put into effect through legislative measures. It did not seem to him that any positive obligation arose from them for the signatories. If another interpretation were admitted, to the effect that the States were enjoined to take specific measures, the articles would probably not meet with general acceptance. If the existing text was likely to cause confusion, his delegation would suggest that it should be replaced in each article by: "Each State Party to the Covenant shall direct its policy towards ensuring or securing the right. . ." He further proposed that the word "progressively" should be inserted between the words "be" and "taken" in the introductory part of article 13, paragraph 2.

12. The question of the right of petition had been the subject of protracted debates which had not led to any definite decision. He wished to stress in that connexion that the right of petition should not in any circumstances be extended to individuals. It was generally recognized that conventions, the instruments of international law, were concerned only with States. It would be the responsibility of the States which had acceded to the covenants to ensure the individual's enjoyment of the rights proclaimed. Individuals should be permitted to submit an appeal only to the judicial authorities of their State. That matter was within the domestic jurisdiction of States: The United Nations was not a supranational authority.

13. In conclusion, he asked the Committee to spare no effort to achieve the ideal objective: a harmonious international code of human rights which would be one of the United Nations most noteworthy achievements for the greater good of all mankind. His delegation was prepared, if necessary, to act with the spirit of conciliation and compromise which might be required for the accomplishment of the Committee's work.

14. Mr. JUVIGNY (France) said that previous speakers had emphasized the articles which they considered the most important or the most open to criticism. His delegation thought that the work that was being done should be regarded as a test to enable the representatives of sixty nations to appraise the work of the eighteen members of the Commission on Human Rights.

15. Some of the articles of the draft covenants had been adopted by only a very small majority. The aim was, however, to prepare instruments likely to be ratified by the largest number of States. Covenants with provisions on a level so low that all States could ratify them instantaneously, being devoid of all dynamic force, would have no real effect, but an ideal document which no nation could in good faith ratify would be tainted by the academic vice. Between the two extremes there was room for an intermediate idea.

16. The covenants were legal instruments designed to give effect to the Universal Declaration of Human Rights and should not normally deal with any rights other than those proclaimed in the Declaration, but they should logically deal with all such rights to the extent that it was legally possible to put them into effect. In that connexion, his delegation deplored the absence from

the draft covenants of such rights as the right to property and the right to the protection of moral and material interests deriving from any scientific, literary or artistic work. The representatives of Costa Rica, Egypt and Burma had already drawn the Committee's attention to the serious gap created by the lack of any provision on the right to property.

17. There was also another important omission: the right of asylum, which was clearly proclaimed in the Universal Declaration of Human Rights but of which the draft covenants said nothing. It would be paradoxical for the world community, which was so actively concerned with the problem of refugees, not to include the sacred right of asylum in the covenants.

18. Having mentioned those omissions, his delegation was gratified to note that a great many articles were well drafted. It would not dwell on those it would support but thought it would be more useful to mention those on which it had some important observations to make. For the moment he would confine himself to the articles in which the rights were defined.

19. As regards civil and political rights, the article on the right to life did not take account of the inevitable exceptions. Self-defence and attacks upon life which might result from enforcement actions authorized by the United Nations Charter had deliberately been omitted. It was true that the majority of the Commission had thought that those limitations would be implicitly justified by the phrase "no one shall be arbitrarily deprived of his life", but the debates had shown that those who preferred that phraseology had themselves been divided as to its interpretation. A serious analysis of the problem was therefore essential if all doubt as to the real meaning of the article was to be avoided.

20. With regard to the limitations on the exercise of the rights in general, the existing drafts, while not perfect, showed that a solution had been found for the controversy over the notion of "public order", as opposed to the Anglo-Saxon idea of "prevention of disorder and crime".

21. The representatives of Saudi Arabia and Afghanistan had criticized the article on freedom of thought, conscience and religion, but their criticisms and misgivings were unfounded. The text had been adopted unanimously. It was therefore difficult to claim that it had been inspired by certain interests or that it favoured certain faiths. The article which, he further reminded the Saudi Arabian representative, faithfully reproduced the text of article 18 of the Universal Declaration, was in conformity with French traditions of tolerance and his delegation would support it.

22. With the exception of the omission of the right to safeguard the material and moral interests of creative artists, all of the provisions relating to cultural rights had been drafted satisfactorily.

23. He felt more hesitation about some of the texts on social rights and in that connexion associated himself with some of the United Kingdom representative's comments on article 7. France supported the principle of equal pay for men and women workers and French legislation on the guaranteed minimum wage was applied without any discrimination. But the text of article 7, unlike other articles of the draft covenant in question, sought to nullify the clause on progressive application. Owing to the role of collective bargaining

in the social position of labour in most countries, the State could not forthwith guarantee general application of the principle of absolute equality of all salaries. From the viewpoint of the concise drafting of the covenants, article 7 was very instructive. It proved that his delegation and those which shared its views had been justified in envisaging the covenant on economic, social and cultural rights as a skeletal text containing clear definitions of the rights but avoiding any exhaustive and detailed explanation in order to permit the specialized agencies to fill in the framework thus erected.

24. With regard to some more general provisions, some delegations, and particularly the United Kingdom delegation, had already mentioned the provision prohibiting discrimination. He would merely say, in that connexion, that the text, as it then read in the draft covenant on economic, social and cultural rights, might impair the principle of progressive application and that principle, in his delegation's opinion, had to be accepted by any State desirous of giving as much effect as possible to the rights, but at the same time aware of the limitations in the way of the immediate achievement of an ideal standard of living. His delegation wished at least to point out that the relationship between the provision on progressive application and the provision prohibiting discrimination had not been clarified during the preparatory discussions.

25. Referring to an allied subject, he thought it important to mention some doubts which still weighed upon the methods of giving national effect to the civil and political rights, as described in article 2, paragraph 2, of the draft covenant. In its previous drafting, the text had provided that the contracting States would undertake to take steps to give effect to the rights within a reasonable time. Deletion of the reference to a reasonable time could be interpreted in two ways: it could mean either that, when a State ratified the covenant, its legislation should be consistent with the covenant, or that it would have an indefinite time in which to take the necessary steps. The French delegation thought those two interpretations unacceptable, the first because it might well be unrealistic and the second because, as the United Kingdom delegation had rightly pointed out, the idea of progressiveness could not be admitted when it was a question of fundamental rights. Article 49, on the implementation of the covenant in question, was undoubtedly such as to refute any interpretation indicating progressiveness *ad infinitum*, but it was still true that there was a problem which should be clarified before the draft covenants were submitted to the General Assembly and the States. That was all the more necessary because the whole nature and scope of States' undertakings depended on the drafting and interpretation of that clause. Moreover, the problem would have to be examined in conjunction with that of reservations.

26. In that connexion, the French delegation had already stated that it was favourably disposed towards the United Kingdom proposal. The requirement of a two-thirds majority for the acceptance of reservations lessened the risk of general reservations. With the new drafting, there was no longer any reason to fear that the reservations might be indefinite in time and it might be possible to dispel the misunderstandings over the interpretation of article 2, paragraph 2, of the draft covenant on civil and political rights in conjunction with the mechanism of reservations.

27. With regard to the federal clause, he was grateful to the Costa Rican representative for having shown his appreciation of the proposal by Australia and India, as amended by France (E/2573, paras. 246 to 248). The federal clause was no longer embodied in the draft, but the French delegation thought that a question of such importance would probably be raised again and, if so, it thought that it would be necessary to take the fullest possible account of the inherent requirements of a federal structure and, at the same time, of the virtually universal application of the rights recognized in the covenants. Indeed, a clause which would oblige States with a federal or virtually federal structure to upset their constitutional system could only damage the chances of ratification of the covenants and on that point he fully agreed with the United Kingdom delegation's observations.

28. The French delegation considered the covenants a real juridical revolution, which deserved to be endorsed by the greater part of the international community. In the text of the draft covenant on civil and political rights as it stood, it was provided that the covenant would come into force when twenty States had deposited their instruments of ratification or accession. To the French delegation, it was inconceivable that covenants, which would have the effect of introducing into international law many rights which had hitherto depended solely on domestic law, should enter international law by the back door. The French delegation thought that they required ratification or accession by at least half the Member States.

29. Some delegations had expressed concern about the duality of the covenants. In fact, it had to be admitted that the division into two covenants had proved acceptable and practical, particularly with regard to their implementation, it being well understood that the two instruments would be submitted to the General Assembly for consideration together. There were considerable differences in the methods of implementing the two covenants, although there were some points in common. On some points, the French delegation would have liked more similarity. Nevertheless, the proposed system of implementation constituted a whole, some parts of which were without precedent in international law. That whole to some extent combined the methods of preventive control and corrective control, something which the French delegation had advocated for a long time. At that stage, however, it wished to state how much it deplored the disappearance of a text which, in its original drafting, had reserved the right of the specialized agencies to examine complaints concerning the few rights in the covenant on civil and political rights which fell within their province, and it hoped that a majority would be found to restore the right during the detailed examination of the articles.

30. At the beginning of his speech, he had said that the covenants should not normally deal with rights which did not appear in the Universal Declaration of Human Rights. That statement was most forceful when applied to the inclusion of the highly political principle of the right of peoples to self-determination. The French delegation's views on that subject were well known and it would merely note that the provisions on the implementation of the right could not but add to its misgivings. The powers to be given to the human rights committee would make it a real political court,

while with regard to individual rights the members of the committee would, rightly, be real judges acting independently. To read article 48 it might be thought that in a very complex field the legislators of the covenant had found a remedy for all tensions past, present and future. Through a mechanism of disarming simplicity, the political status of the States might everlastingly be questioned. But in the light of the tendencies which had prevailed throughout the examination of that problem since 1951, the mechanism would be fully applied only to the Non-Self-Governing Territories, thus emphasizing once more the discrimination which the French delegation had many times noted. Moreover, the system provided for implementation of the principle was paradoxical because it sanctioned the right of petition for a political and collective right while rejecting it for individual rights.

31. In making his statement, he had tried to reply to the Costa Rican representative's appeal to avoid any polemics. He had no intention of taking the same stand as the Saudi Arabian representative sometimes did, especially as some of that representative's declarations seemed to bear little relation to reality. One of those declarations would have led to the conclusion that in Algeria French citizens who were Moslems did not speak Arabic, which would give the impression that they were deprived of that right and were not taught in that language. As everyone knew, that was completely contrary to the facts. The Saudi Arabian representative had, also, spoken of Algeria, Tunisia and Morocco in the same breath, thus ignoring the fundamental differences between their juridical systems. Without examining such statements in detail, he would merely say that they were perhaps not altogether opportune at a time when the French and Tunisians, for example, were working together to find solutions, which concerned them above all.

32. The Third Committee should undertake a detailed examination of the draft covenants. From the earnest examination of those texts it would draw the conclusion that most things were possible but some were not. It could and should sort out the maximum number of provisions acceptable to the greatest possible number of States. It would thus be possible—and the French delegation fervently hoped so—to reach a point halfway between the ideal of tomorrow and the reality of today.

33. Mr. BAROODY (Saudi Arabia) said that he wished to reply to some of the French representative's comments on his own statement at the 563rd meeting. He wished first, however, to congratulate the French representative on the insight he had shown in his statement on the work of the Commission on Human Rights and some articles of the draft covenants.

34. The French representative had stated that since the adoption of the Universal Declaration of Human Rights, the Commission on Human Rights had debated article 18 of the draft covenant on civil and political rights at length, but he had ignored the fact that the Saudi Arabian delegation, among others, had abstained in the vote on that Declaration and had on several occasions stated the reasons for its abstention. No one had ever been able to explain satisfactorily why certain States had insisted on the inclusion of the words "to maintain or to change his religion" in paragraph 1 of article 18. He had in fact been given to understand

that the insistence had been due to the pressure exerted by missionaries on certain delegations. He did not in any way suggest that the French delegation was responsible for that wording: he merely wished to emphasize that, in his opinion—an opinion which, incidentally, he believed was shared by the great majority of the Moslem world—those words should not have been included in article 18, inasmuch as they applied to religion only and not to freedom of thought and conscience. The reason why he was stressing that point was that he represented a country whose sacred cities of Mecca and Medina made it the very centre of the Moslem world. He drew the Committee's attention to the remarkable exposition of Moslem philosophy which the Afghan representative had made at the preceding meeting. Religion, unlike thought, was concerned with emotional life, not with intellectual life. If the emotional life alone were stressed, as it was in article 18, there were those who might justifiably take offence. The French representative claimed that article 18 was in keeping with his country's traditions of tolerance. He, for his part, considered that the matter under discussion was not a question of tolerance, but a purely practical question. He recalled the statement he had made at the 563rd meeting on that article. The Near East, the cradle of three great religions, was at present overshadowed in the technical field by the West. Western missionaries exploited the situation in their efforts to persuade the ignorant masses that there was a connexion between the religion they sought to propagate and technical progress. That was where the danger lay: attempts were being made to spread that false idea, and article 18 as it stood lent itself to such tactics. The Saudi Arabian delegation would not like to be prevented, by the insistence of other delegations on the inclusion of the article as it stood in the draft covenant, from approving the draft as a whole, as had been the case with the Universal Declaration of Human Rights. That was why it urged the other delegations to heed its appeal and to agree to reverse their decision.

35. With regard to the French representative's reply to the remarks he had made at the 563rd meeting on the use of Arabic in Algeria, he wished to explain that he had spoken entirely from his own experience. He knew that the French did not prevent the inhabitants of Algeria, Morocco and Tunisia from learning whatever languages they chose, but that did not alter the fact that, when he had spoken to Algerians in literary Arabic, they had not been able to understand him, and that it had been necessary to continue the conversation in French. In adducing that example, he had merely wished to point out that, if the Algerians were a free people, they would certainly learn Arabic. The subject of the current debate was human rights. In most cases the exercise of those rights depended upon the exercise of a fundamental right—the right of self-determination of peoples and nations. That was a proposition which no one could deny. The French occupied the territories of North Africa as if they had been presented with them by God, as if they had a right to them. They invoked laws and principles. He called upon them to come down from their ivory tower, to face the realities of life and of history, in short, to acknowledge that the current widespread bloodshed and revolutions were due to the

fact that the fundamental right of the self-determination of peoples was not being respected. He had felt obliged to speak at length in order to make clear that the exercise of human rights was in the first place dependent upon the liberation of oppressed peoples.

36. Mr. PAZHWAK (Afghanistan), replying to the French representative's remarks regarding his own statement at the preceding meeting, explained that, while he had criticized the provisions of article 18 of the draft covenant on civil and political rights, it was incorrect to say that he had described that article as having been drawn up and inserted in the draft covenant at the request of certain groups and in order to serve their interests. The French representative contended that article 18 of the draft covenant was a literal restatement of article 18 of the Universal Declaration of Human Rights. He did not share that opinion. The Afghan delegation had supported the Universal Declaration because it confined itself to a statement of principles. His criticisms at the preceding meeting had been aimed exclusively at the text of article 18 of the draft covenant on civil and political rights and not at the principles on which it was based. The French representative had spoken of tolerance. Islam also taught tolerance and required Moslems to respect the religion of others. As a good Moslem, he respected the French representative's religion. He would be pleased to let the French representative have the text of the statement he had made at the preceding meeting, which he invited him to read and see whether he had really uttered the words that had been attributed to him. If the French representative found that such was not the case, he should withdraw his statement.

37. Mr. JUVIGNY (France) explained that he had referred to the criticisms of article 18 of the draft covenant on civil and political rights that had been expressed by the two delegations. He had then replied, not to the Afghan representative but to the Saudi Arabian representative, who had alleged that certain groups outside the Organization had exerted pressure in order to secure the adoption of that article. The French delegation's remarks were therefore clearly directed to the Saudi Arabian representative and not the Afghan representative.

38. The Afghan representative had referred to the French representative's religion. In that connexion, he wished to point out that there was no official religion in his country. There were many religions in France, including Mohammedanism; some of the inhabitants, on the other hand, had no religion.

39. With regard to the question raised by the Saudi Arabian representative in connexion with article 18, he recalled that the eighteen delegations represented on the Commission on Human Rights had voted for that article. Such unanimity clearly demonstrated that the Commission's decision had not been dictated by any pressure from a group outside the Organization. The Third Committee was starting a general debate on the draft covenants on human rights, and it was therefore out of place to put such insistence upon the provisions of a single article.

The meeting rose at 12.50 p.m.