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Chairman: Mr. Jiří NOSEK (Czechoslovakia).

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*)

1. Mr. BEAUFORT (Netherlands) stated that the essential significance of the draft covenants on human rights lay less in the recognition of the rights of the human person than in the affirmation that States were not all-powerful and that fundamental human rights were independent of States and therefore inviolable. The importance of that development could not be overestimated, particularly at a time when in vast areas of the world human rights were constantly violated. Furthermore, the covenants dealt a fresh blow at the antiquated doctrine that international law applied only to relations between States, and they were a stimulus to the growing trend towards recognizing individuals also as subjects of international law. The entry into force of part IV of the draft covenant on civil and political rights would signify, so far as human rights and fundamental freedoms were concerned, the final collapse of the sanctuary of domestic jurisdiction and a further pushing back of national sovereignty, the doctrine of which had been a standing obstacle to the development of an organized international community.

2. Those considerations showed what great importance the Netherlands Government attached to the draft covenants. It was most anxious, however, to see them drawn up in a form which would ensure their acceptance by the greatest possible number of States; yet, without being unduly pessimistic, the Netherlands delegation feared that as they stood they were unacceptable to many States and even to those in which a high degree of observance of human rights was guaranteed by municipal law. It was true that the draft covenants included many excellent and well-drafted provisions but the discussions which had taken place in the Commission on Human Rights and the General Assembly had brought to light profound differences in outlook on important questions. Three points of view had been revealed: he would call their advocates minimalists, maximalists and moderates. The mini-

malists would reject every measure of implementation and thus rob the covenants of all significance. The maximalists would disregard special cultural, social or constitutional circumstances in their eagerness to act with all possible speed and in so doing they ran the risk of achieving nothing. The moderates, while recognizing that if human rights were to be internationally safeguarded they had first to be codified, felt that it would be a difficult task and should, therefore, be undertaken only gradually. The Netherlands Government had always stressed that the very nature of human rights required that every effort should be made to give the widest possible application to all measures designed to ensure international respect for those rights. It was more important to achieve some form of unification of human rights which would be acceptable to the greatest possible number of countries than to draw up highly detailed covenants which would apply to a multitude of rights and consequently run the risk of being accepted by only a small number of States. The Netherlands delegation felt that the draft covenants erred both on the side of excess and on the side of omission. It agreed with most of the objections raised by the United Kingdom and Australian delegations and would accordingly confine itself, at the current stage of the general debate, to giving a few examples.

3. The right of peoples to self-determination was a collective right which should not be enunciated in covenants that covered individual rights only. It was a complex question which should be approached only with extreme caution, for fear of sowing confusion and disorder in a world which needed above all to develop peacefully.

4. Article 2, paragraph 2, of the draft covenant on civil and political rights (E/2573, annex I) was unacceptable in the form in which it stood, because it appeared to give States an indefinite period within which to adopt the legislative measures necessary to give effect to the rights recognized in the covenant. As the Australian representative had rightly pointed out, that paragraph should be re-examined in relation to the question of reservations.

5. The Netherlands delegation regretted that the Commission on Human Rights had been unable to reach a decision on the important question of reservations, which was the subject of General Assembly resolution 546 (VI). He fully appreciated the attitude of those delegations which opposed the inclusion of a provision regarding reservations in the draft covenant on civil and political rights but, as the United Kingdom and Australian delegations had pointed out, it would be regrettable if a number of States were obliged by the absence of such a clause to withhold their accession to the covenant. The safeguards proposed in that connexion were such as to dispel any fear that the provision regarding reservations might be abused.

6. With regard to article 28 of the draft covenant on economic, social and cultural rights (E/2573, annex I) and article 53 of the draft covenant on civil and political rights, he would merely point out that in their existing form those articles showed a lack of confidence in the administering Powers and failed to take into account the necessity of consulting some Non-Self-Governing Territories on their acceptance of provisions of the covenants that referred to questions within their jurisdiction.

7. The provisions of article 27 of the draft covenant on economic, social and cultural rights and article 52 of the draft covenant on civil and political rights constituted what might be termed an anti-federal clause and ran counter to General Assembly resolution 421 (V), section C, in that they failed to take into account the constitutional problems of federal States.

8. The foregoing were the few general observations he wished to make at the current stage of the discussion. He was convinced that every member of the Committee earnestly hoped that the arduous work devoted to the draft covenants for so many years would soon be completed and that the results would be acceptable to the majority of States. He concluded his remarks by reminding the Committee of Goethe's words: "The wise man is recognized above all by his moderation."

9. Mr. GONZALES (Philippines) pointed out that the Philippines had never deviated in its efforts on behalf of respect for human rights; its delegation could always be relied upon to give its unqualified support to every effort made in the cause of liberty. The Philippine Constitution guaranteed to citizens almost all the rights set forth in the draft covenants. He hoped that, between the first and second readings which had been provided for, the views of delegations would be sufficiently crystallized to lead to agreement upon a final text likely to be acceptable to the vast majority of the sovereign peoples of the world.

10. Some provisions were already such as might meet with general agreement. The measures provided for by the draft covenant on economic, social and cultural rights should be adopted "progressively," as stipulated in article 2, paragraph 1. In that connexion it would be desirable, for the sake of euphony, to replace the words "undertakes to take" by "undertakes to adopt". At all events the article was such as to reassure those Governments which might legitimately entertain misgivings. Some States could not immediately bring about complete social equality between men and women; customs could be changed only in the course of time. Similarly the various steps enumerated in article 13 might well sound fantastic in relation to the current resources of many countries. Article 14, paragraph 2, also, appeared to betray an excessive optimism. The Philippine Constitution provided for the establishment of a complete system of public education, to offer at least free primary instruction and courses in citizenship for adults, but there was no law which made primary education compulsory. Indeed, there was no need for such a provision in view of the enthusiasm with which parents sent their children to school, as a result of which the appropriation for education absorbed more than 32 per cent of the State budget. Furthermore, the word "compulsory" was not altogether in keeping with the spirit of human rights, which was based upon freedom. Very

few countries could guarantee to their nationals forthwith all the social benefits mentioned in the draft covenant. It was impossible to bring about a life of plenty for mankind from one day to the next. Whatever high hopes were entertained for the future of the United Nations, the draft covenant would not have the sudden miraculous effects of Aladdin's lamp.

11. At all events, the draft was not yet anywhere near perfection or the Committee would not be trying to improve it; if there were unanimous agreement on all its provisions, it would probably mean that the millennium had been reached. Nevertheless the draft covenant expressed mankind's deep-rooted and legitimate aspirations; it was only the form in which those aspirations were expressed that could be changed. Every man and woman in the world cherished the same hope: the hope of peace and contentment of body and mind. Needs were the same everywhere; it would be wrong to cling to outmoded political notions of domination and remain deaf to the voice of oppressed peoples. The peoples which still lived in subjection had as much right as others and more to benefit under the contemplated covenants; it was for the authorities concerned to realize that fact, bearing in mind the principles of the United Nations Charter.

12. The Philippine delegation attached particular importance to the principle of the permanent sovereignty of peoples over their natural wealth and resources, a principle which was consecrated in the Philippine Constitution. It necessarily followed from that principle that in no case might a people be deprived of its own means of subsistence on the grounds of any rights that might be claimed by other States; to hold the contrary view would be to justify economic encroachment and the exploitation of other countries' resources without any basis in law.

13. The right to work appeared equally important to the Philippine delegation. Its realization, however, depended on the economic conditions of each community and therefore that right, like several others recognized in the draft covenant on economic, social and cultural rights, was not susceptible of immediate application. The Philippine Government could accept article 6, subject only to the restrictions permitted by the Philippine Constitution.

14. The Philippine delegation regretted that the Commission on Human Rights had been unable to agree on a draft article on the right of property. The main source of disagreement had been a secondary aspect of the question, namely the possibilities of expropriation. The General Assembly, comprising as it did the representatives of all sixty Member States, would doubtless be able to take a definite decision on that point.

15. The draft covenant on civil and political rights contained many provisions which were enshrined in the national constitutions or laws of many Member States. The Philippine delegation did not agree with the United Kingdom representative on the interpretation to be placed upon article 24. All the provisions of the draft covenant were subject to the provisions of article 1. That article proclaimed the permanent sovereignty of peoples over their natural wealth and resources. There could be no exception to the application of that principle; the absence of discrimination was in no sense a prohibition of measures to control

foreign workers. The Philippine Constitution, moreover, expressly limited to citizens of the Philippines the disposition, exploitation, development or utilization of the country's national resources and the operation of public utilities. The United Kingdom representative had also maintained that article 24 would abolish all distinctions on the ground of birth in matters of inheritance. But article 22 of the draft covenant on civil and political rights emphasized the fundamental importance of the family in society. It would be sapping the institution of the family not to establish, as did the Civil Code of the Philippines, a distinction between legitimate and illegitimate children in matters relating to inheritance. For all those reasons the Philippine delegation wished to stress that, to interpret the covenant correctly, it was necessary to consider it as a whole, and not to consider any article in isolation, since all the articles were interdependent. The Philippine delegation agreed with the United Kingdom representative that the covenant on civil and political rights should be precise in its wording and should be in a form which States parties to it would be able to apply.

16. He was glad to note that two recommendations submitted by the Philippine Government in 1951 had been retained in drafting the covenant. The first recommendation concerned the right to found a family (article 22). The family was the cornerstone of all human society; it was a matter for deep satisfaction that the covenant recognized that fact. The second recommendation concerned the protection of the individual against arbitrary interference with his privacy (article 17).

17. The Philippine Government approved of the proposed measures of implementation, which corresponded to two suggestions the Philippine delegation had put forward: namely, that the procedure for reporting should apply in principle to both covenants and that appeal should be allowed to the International Court of Justice against any conclusion adopted by the proposed human rights committee. On the other hand, the Philippine Government regretted that despite the formal directives given by the General Assembly on the subject, the draft covenant did not include an article concerning the admissibility of petitions from individuals and non-governmental organizations. That omission was probably due to the fact that the majority in the Commission on Human Rights was not the same as that in the General Assembly. In that connexion he quoted a statement by Professor Lauterpacht that the individual should have recourse to an international tribunal to obtain redress for any violation of his fundamental human rights. It would certainly be possible to find a suitable formula which would allay any fears that the right of petition might be abused; for that matter, any right might be abused if adequate guarantees were not provided. At all events the path entered upon at San Francisco had to be followed and the individual should be regarded as a subject of international law.

18. With regard to the question of reservations (E/2573, chapter III, part IV B, and annex II) the rigid position taken by some delegations against certain articles showed the appositeness of the proposal which the Chinese, Egyptian, Lebanese and Philippine delegations had submitted to the Commission on Human Rights. The Commission had transmitted to the

General Assembly three draft articles, together with the proposed amendments to them. Between the two extremes represented by the Chilean and Uruguayan proposal and the USSR amendments, the four-power proposal and the United Kingdom proposal seemed to offer a possible compromise. The last two could be combined as follows: first, reservations could be permitted to any article of the covenants and not only to those in part III; secondly, reservations would not be admitted unless they were compatible with the object and purposes of the covenant and were accepted by two-thirds of the States parties to the covenant. It would thus be for the States concerned to decide whether or not the proposed reservations were compatible with the object and purposes of the covenant. The International Court of Justice would not intervene unless those States so desired. By that method it would be possible to ensure the accession of the greatest possible number of countries to the covenants and to give them a truly universal character.

19. In conclusion, the Philippine delegation called on all members of the Committee to put their whole intelligence and their whole heart into their efforts to solve the problem before them in a spirit of mutual understanding and good will.

20. Mr. ZUBIETA (Panama) said that his delegation approved in principle of the draft covenants which had been submitted. There were still some minor details to be settled but the work accomplished appeared on the whole to be satisfactory.

21. The question of discrimination was of paramount importance. In Panama the Constitution formally prohibited all measures of discrimination and its provisions were put into practice. Aliens in Panama enjoyed complete equality of rights. In the Canal Zone, which had been placed under United States jurisdiction in virtue of international agreements, a start was being made in providing for the elimination of every trace of the discriminatory practices which had sometimes caused friction between the Panamanian and United States Governments. The Panamanian delegation expressed its full satisfaction at that development.

22. The Panamanian Government had transmitted to the United Nations Secretariat statistics showing the scope and the considerable progress made in the social services in that country. Panama thus ensured that all the inhabitants of its territory enjoyed the rights provided for in the draft covenants.

Aid to flood victims (continued)

23. The CHAIRMAN stated that in accordance with the desire expressed by the Committee at its previous meeting he had addressed a letter to the Secretary-General requesting him to invite the executive heads of the specialized agencies and of UNICEF to extend assistance to the victims of the recent disaster in Costa Rica. The Executive Director of UNICEF had informed the Chairman that he had sent a telegram to his representative in Guatemala asking him to go at once to Costa Rica to assess the amount of assistance needed.

24. Mr. ZUBIETA (Panama) pointed out that the Province of Chiriqui in North East Panama had suffered the same disaster as Costa Rica. He therefore suggested that UNICEF and the specialized agencies should also render assistance to Panama.

25. Mr. AZKOUL (Lebanon) supported that suggestion.

26. The CHAIRMAN said that if the Committee accepted that suggestion he would send another letter to the Secretary-General asking him to approach the

executive heads of the specialized agencies and of UNICEF to extend emergency assistance to Panama also.

It was so decided.

The meeting rose at 11.45 a.m.