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CONTENTS

Chairman: Mr. Jiří NOSEK (Czechoslovakia).

Statement by the Chairman

1. The CHAIRMAN read a telegram which he proposed the Committee should send to the Egyptian Government, conveying its deep sympathy on the occasion of the death of Mr. Mahmoud Azmi, the Chairman of the Permanent Delegation of Egypt to the United Nations.

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*)

2. Mrs. US (Byelorussian Soviet Socialist Republic) observed that it was unrealistic to take as a criterion for the covenants on human rights the maximum requirements of the most progressive national constitutions and also to adopt minimum requirements which would not correspond to the level achieved in many countries. The correct course, therefore, was to take the provisions of the Charter relating to human rights as a criterion.

3. Some delegations, such as those of the United Kingdom, France, Australia and Belgium, considered that some of the most progressive provisions of the draft covenants (E/2573, annex I), including those on the right of self-determination, prohibition of discrimination and incitement to national hostility, equal rights for men and women, participation in public affairs, and education and health, should not be included in the covenants. They thought that the right of self-determination should be excluded because it was a collective right and therefore had no place in covenants devoted to individual rights. That argument was based on a purely artificial division of human rights. It was obvious that, if the right of self-determination were not extended to peoples or nations, it could not be enjoyed by the individuals who formed part of those peoples or nations. The same applied to the right of peoples to exercise permanent sovereignty over their national resources. The individuals who were members of the people concerned would certainly suffer if the people as a whole were deprived of its means of subsistence. The implementation of many of the articles of the covenants depended on the exercise of the right of self-determination.

4. The Byelorussian Constitution was based on the principle of the equality of all peoples and nations, irrespective of their past history, weakness or strength. When Byelorussia had received its independence within the Soviet Union, it had been able to develop in a remarkably short time into a thriving republic, with an advanced industry, a productive agriculture and a high standard of culture and education. The Second World War had dealt heavy blows to the economy and culture of the Byelorussian SSR, but the assistance of its sister republics of the Union and its own efforts had enabled it to overcome that set-back and to make even greater economic, social and cultural progress. Her country's achievements showed what could be done by a people which exercised the right of self-determination.

5. She could not agree with representatives who objected to the insertion of the territorial clause in the covenants merely on the ground of the difficulties of implementing the covenants in Non-Self-Governing and Trust Territories. Under Chapters XI and XII of the Charter, the United Nations had assumed the obligation of promoting respect for human rights in those territories, and the inclusion of a territorial application clause in the covenants fully corresponded to the provisions of the Charter.

6. The Byelorussian delegation also supported the inclusion in the covenants of the provision prohibiting discrimination and specific provisions relating to health and education. It agreed with previous speakers who had refuted objections to the inclusion of the latter provisions.

7. The inclusion of so many progressive provisions made it possible to accept the draft covenants as a basis for article-by-article discussion. Nevertheless, the General Assembly would have to remedy many shortcomings, such as the absence of several important provisions. Moreover, the draft covenants contained some articles which were contrary to the provisions of the Charter on non-interference in the domestic affairs of States. That applied to the proposed measures of implementation. Although it was true that the covenants were pointless unless they were applied, the proposed system ran counter to the principle of State sovereignty. Real implementation could be achieved if provisions for the observance of obligations undertaken by States were elaborated in greater detail in the covenants themselves and if States undertook to carry out those measures, in accordance with the economic, social and national peculiarities of each country. In that connexion, she endorsed the provisions of the draft cove-

nants relating to the realistic implementation of the rights enumerated in the texts, such as article 2, paragraph 1, of the draft covenant on civil and political rights. Article 9 of the draft covenant on economic, social and cultural rights was an example of an amplification which would secure implementation. That article did not mention social insurance and contained no reference to the measures for implementing the right. That shortcoming could be remedied by adding the provision that the costs of social insurance and social security should be borne by the State or by the employer, according to the legislation of each country.

8. She agreed that it was essential to include in the draft covenants such provisions as the prohibition of war propaganda, of incitement to hostility among nations, of racial discrimination and dissemination of slanderous information and the prevention of the use of the right of association for the establishment of organizations of a fascist and anti-democratic character.

9. It was necessary, simultaneously, to ensure that the covenants included specific obligations with regard to such an important question as ensuring freedom of action for national and international trade-union organizations.

10. She also endorsed the view that article 16 of the draft covenant on economic, social and cultural rights should be supplemented by a provision to the effect that States measures for the development and dissemination of science and culture should serve the interests of progress, democracy and the maintenance of peace and international co-operation.

11. As the representative of a country where equal rights for women were implemented, she agreed with the view the Ukrainian representative had expressed on the subject.

12. Miss BERNARDINO (Dominican Republic) said that since discussion of the draft covenants (E/2573, annex I) had begun, the Dominican delegation had supported any resolution in favour. Yet, as some other delegations had pointed out, the draft covenants were still deficient and a very careful review would be needed if they were to become acceptable international instruments. In any event, they would have to be submitted to Governments again before the General Assembly, at its tenth session, would be in a position to give them the final form for which the world had been waiting so many years. In that connexion, it should be remembered that the United States representative had suggested that the door should be left open for appropriate amendments by the Committee.

13. Some delegations had expressed disagreement with certain articles which the Dominican delegation found perfectly acceptable. The Dominican Republic had a record of consistent support for equal rights for women, and it had been astonished to hear that some delegations regarded article 3 of the draft covenant on civil and political rights as superfluous, on the ground that it was a repetition of article 2, paragraph 2, of the draft covenant on economic, social and cultural rights. On the contrary, article 3 was one of the most important in the draft covenants because it enshrined a principle of elementary justice, equality of rights. To delete the article would be to deny that women were entitled to expect the equality of rights which was their due. In the current stage of civilization, no international instrument on the scale of the draft covenants on human rights could fail to include one or more articles relating explicitly to women. The male no longer represented the whole species. The Dominican delegation would have liked to see other articles drafted as specifically as article 3, but felt sure that it had been the intention of the authors of the covenants that all the rights mentioned in them should apply equally to men and women.

14. The more advanced countries in which women had achieved true equality sometimes found it difficult to realize that in some parts of the world women were still treated as chattels; it was of women in those areas that the Committee should think. The same problem had arisen at the San Francisco Conference, and it was satisfying to note how the amendments to the Charter insisted upon by such countries as the Dominican Republic had contributed to the promotion of the rights of women.

15. The Dominican delegation could not agree with those who wished to remove the principle of non-discrimination from article 2, paragraph 2, and article 7 of the draft covenant on economic, social and cultural rights. There should be no discrimination of any kind in the application of human rights. It was, however, reasonable to meet the wishes of those who had suggested amending article 7 to bring it into line with article 2 of International Labour Convention No. 100. The principle of equal pay for equal work had been one of constant concern to the Commission on the Status of Women.

16. With regard to article 20 of the draft covenant on economic, social and cultural rights, the Dominican delegation agreed with the Swedish representative (571st meeting) that paragraph 1 should be changed to read: "Special protection should be accorded to maternity during reasonable periods before and after childbirth", maternity being interpreted broadly to cover the periods of gestation and lactation. On the other hand, the so-called "welfare" that was being foisted on women was dangerous and, paradoxically, in conflict with the principle of equal rights. Article 10, paragraph 3 of the draft covenant on economic, social and cultural rights should be transferred to article 22 of the draft covenant on civil and political rights; paragraph 4 of the latter should be brought into line with the recommendation of the Commission on the Status of Women at its seventh and eighth sessions and drafted in the precise language required by international agreements. The important thing was that the draft covenant on civil and political rights called for immediate implementation. In that connexion, the Dominican delegation wished to pay a tribute to Mrs. Lefaucheux, a representative of France and former Chairman of the Commission on the Status of Women, for her energetic defence of the Commission's point of view at the ninth session of the Commission on Human Rights in 1953. The Commission on the Status of Women felt that the phrase "directed towards" in article 22, paragraph 4, was vague and should be replaced by some more precise legal formula.

17. Mr. AZKOUL (Lebanon) thought that it might be helpful to review the principles on which the draft covenants were based and the structure resulting therefrom before the Committee examined the articles themselves.

18. International protection of the individual had entered international jurisprudence for the first time when the signatories of the Charter of the United Nations had pledged themselves to achieve international

co-operation in encouraging respect for human rights and fundamental freedoms and when the United Nations had set up the organs required to give effect to that pledge. Henceforth the individual, who had until then had only the State to look to for his protection, came under international protection. That had been necessary, for, while the individual might be protected by the State, he was also at its mercy. International protection had become the more necessary because the individual was in growing danger of being crushed by the increasingly intricate and powerful machinery of the modern State. On the one hand, he might become a mere cog in the machinery of the totalitarian State; on the other, he might be lost sight of as the States opposed to totalitarianism became more centralized precisely owing to that opposition. That was why the Charter and the instruments that had followed from it placed emphasis on the protection rather than on the duties of the individual. The current danger was not anarchy or individual licence, from which Governments required protection, but the excessive development of the modern State, from which the individual required protection.

19. The Charter had failed to specify or describe the human rights and fundamental freedoms, but had stated only that the United Nations was bound to see that they were respected and the only obligation laid on Member States was that set forth, in Article 56, of co-operating with the Organization in promoting universal respect for, and observance of, human rights and fundamental freedoms.

20. Accordingly, the Commission on Human Rights had been instructed to remedy the omissions and had coped with the enumeration and definition of human rights in the Universal Declaration of Human Rights, the most solemn statement of the dignity of the human person. The Declaration, however, had no legal force, great though its moral authority had proved. A great deal had been achieved, however: all Member States were made morally responsible for taking joint and separate action to ensure the protection of human rights.

21. In order to complete the cycle, methods should be found to establish the legal responsibility of each Member State. That principle had been the basis of the draft international covenants on human rights. Each State was to become legally responsible to all other signatory States for the situation of individuals in its own territory and in that of all the other signatory States. From that general characteristic flowed all the particular characteristics of the draft covenants.

22. The question had arisen whether all the human rights enumerated in the Universal Declaration should be included in the covenants. That would have been desirable, but it had been found that certain rights had to be omitted, at least provisionally, for practical reasons. To qualify for inclusion a right should be capable of being formulated in exact and appropriate legal terms and its inclusion should be acceptable to the majority of Member States. A covenant which included a large number of rights but received very few signatures would be nugatory. Some delegations seemed to forget, when they pressed for the inclusion of articles not acceptable to the majority, that signature was, after all, voluntary.

23. Certain rights, such as that in article 28 of the Declaration, could hardly be formulated in exact and appropriate legal terms because the individual State could not assume the responsibility for enforcing them; indeed, such rights could be enforced only collectively. Some rights, such as that in article 25, paragraph 2, had not always been regarded as capable of being a legal obligation, even though the principle was generally acceptable, for economic, social or traditional reasons. The fact that certain rights had been omitted from the covenants should not be interpreted as a wish to disregard them. Every effort should be made to include the greatest possible number of rights, but failure to include them should not be considered as failure to recognize the principle involved. That view was implicit in article 5, paragrah 2, of both covenants. On the other hand, acceptance of that view should not prevent the Committee from doing its utmost to include articles on rights, such as the right to property, which had been omitted only because no formulation of it had met with majority approval. The right to property was a fundamental right and its omission would be doubly dangerous in that that might be construed as a victory for the dangerous thesis that property was a collective right. However, its omission should not give rise to undue alarm, once it was realized that not all the rights in the Declaration could be reproduced in the covenants.

24. The point was worth pressing because it might lead to a solution of the problem of the admissibility or non-admissibility of reservations. Some delegations believed that a State could not make a reservation on any article without infringing the dignity of the human person. That argument would be tenable if the covenants embodied all the rights stated in the Declaration, but even the delegations which had been critical had, for practical reasons, accepted the idea of some omissions. They should accept reservations motivated by a State's inability to assume certain responsibilities rather than delete an article or deter the signatories. They should bear in mind the fact that to propose the deletion of an article was equivalent to making a total and perpetual reservation to it.

25. If a reservations clause was admitted, every effort should be made to see that reservations were restricted to a minimum, that only reservations which were not inconsistent with the purposes and principles of the covenants were admissible and that reservations were provisional.

26. Rights suitable for inclusion in the covenants were of two kinds: those whose enforcement depended solely on the will of the State and those whose application depended on economic, social or cultural conditions not directly controlled by the State. The former created an immediate and absolute obligation; the latter required conditional and progressive application only. That had been a consideration in favour of drafting two covenants.

27. The separation was important particularly since the measures of implementation of the two covenants would necessarily differ. It did not imply any derogation from the source of all rights, the dignity of the human person, nor from the principle of their basic correlation. But the recognition of that fact should not lead to the erroneous view that the civil and political rights were of no value without the economic, social and cultural rights, or of less value, or even of the same value. Every effort should be made to ensure the enjoyment of all rights, but, if there had to be a choice, a Government under which the individual enjoyed the civil and political rights was more

compatible with the dignity of the human person than one which enforced the economic and social rights at the expense of the others. That was an additional argument in favour of the division into two covenants.

28. The two covenants satisfactorily reflected the unity of human rights, as stated in the second paragraph of their respective preambles. One divergence between the preambles should, however, be corrected: the omission of the reference to civil and political freedom in the third paragraph of the preamble to the draft covenant on economic, social and cultural rights. Similarly, the unity and interrelation of human rights were adequately expressed by article 6, paragraph 2, of the draft covenant on economic, social and cultural rights, which subordinated the realization of the economic rights to the need to safeguard the political rights.

29. The draft covenants should be reviewed in the light of the distinction between them to see whether all the articles were appropriate to their special characteristics. The obligation with regard to the civil and political rights was immediate, absolute and subject to no exception. Thus, any article embodying the notion of progressive application would be incompatible with the covenant on civil and political rights and should be amended, unless the exception was intentional. The only two articles embodying that notion were article 1, which was of a special kind, and article 22, paragraph 4, where the phrase "directed towards" might be construed as indicating progressive application.

30. There might be some question about article 2, paragraph 2, of the draft covenant on civil and political rights. It had been said that it could be construed to mean that States were not obliged to enact legislation to enforce the covenant, but simply to begin to make arrangements for conditions under which such legislation could be enacted, and, as no time limit was specified, a State could not at any precise moment be held responsible for failure to comply with the requirement. His delegation would absolutely reject the paragraph if that construction was correct. But it was not correct. The paragraph was, however, badly drafted and wrongly placed owing to the fact that it was still where it had originally been when the time limit of one year had been specified in it. It had not been intended to lessen the immediacy of the obligation, but merely to describe a first stage in the implementation, the second stage of which would be recourse to domestic remedies, the third, recourse to an international instance and the fourth, perhaps, a special procedure for petitions. The paragraph should accordingly be transferred to the measures of implementation and the time limit reintroduced. The purpose would be to institute a new idea of real entry into force, as distinct from the formal entry into force upon ratification. Article 49, paragraph 1, of the draft covenant on civil and political rights, dealing with reports, should not be regarded as similar to the provisions for reports in the other draft covenant, but rather as a declaration by a State that it had enacted legislation in conformity with the covenant and was legally bound by its provisions. On a narrow interpretation a State reporting that only part of the requisite legislation had been enacted would be regarded as having infringed the covenant; in a broad interpretation, it would be regarded as not yet a party to it.

31. As was clear from the four qualifications in article 2, the economic, social and cultural rights were neither absolute nor immediately enforceable, but of progressive application. The idea of progressive application had intentionally been eliminated with regard to certain articles. Those articles affected either a single right, such as those stated in articles 8, 14, paragraph 3, 16, paragraph 3, and 15, in part, or, as in articles 2, paragraph 2, and 3, certain particular aspects of the rights as a whole. Article 2, paragraph 2, had to be read in the light of paragraph 1. It meant that States, although authorized to apply the articles progressively, had at each stage to ensure that they were applied without distinction of any kind, since that lay within the State's power. In certain cases, however, such as article 7, sub-paragraph (*b*) (i), conditions were not wholly within the State's power and so the application of non-discrimination could only be progressive. Some countries found difficulties in connexion with article 2, paragraph 2. They could not be solved by making the prohibition of discrimination progressive, because such prohibition was to a great extent within a State's power; that, too, applied with regard to discrimination on the basis of sex with regard to equal pay for equal work. The only solution would be to make a reservation which could take account of the difficulties in particular circumstances without making a general reservation.

32. All the other rights in the draft covenant on economic, social and cultural rights were of progressive application. States were obliged to do only what they could in the circumstances. Accordingly, the rights were not set out in such precise terms as they were in the other draft covenant and the measures of implementation differed in essence. The system of periodic reports was satisfactory, but would be most effective if the reports were distributed only to States parties to the covenant. Submission of the reports to the Economic and Social Council for transmission to the Commission on Human Rights would be of dubious use, because it would dilute their legal character. Moreover, some signatory States would not be represented on those bodies and some non-signatory States would be, and the reports would become confused with other United Nations reports of quite a different kind. It might also be asked whether the Commission on Human Rights was well equipped to consider the reports to any avail.

33. There was a serious danger that certain articles might detract from the power of the covenants to attract the greatest possible number of signatories. One of those was the territorial application clause, which the administering Powers had always opposed. If that opposition arose from the fear that the covenants could not be applied to the Non-Self-Governing Territories because they were not sufficiently developed, it was not intelligible. The administering Powers had always supported the view that the civil and political rights were of immediate and absolute application, so considerations about development were irrelevant; and it was generally agreed that the other covenant was of progressive application, adapted to the stage of development. On the other hand, such opposition was intelligible if based upon constitutional difficulties caused by the fact that a metropolitan country could not extend enjoyment of the rights to dependent territories without the previous consent of the virtually autonomous local administra-

tions. Reservations to that clause should therefore be admissible, but solely when based upon constitutional difficulties.

34. The federal State clause as drafted was not wholly in conformity with General Assembly resolution 421 C (V), because it failed to take account of the instruction to meet the constitutional problems of federal States. An effort should be made to redraft it; if that failed, reservations based excusively on constitutional difficulties should be admissible.

35. The article of self-determination should not cause difficulties. As drafted, the text did not have the effect of imposing an immediate and absolute obligation; the obligation to "promote the realization" was undoubtedly of progressive application. Article 1 in the draft covenant on economic, social and cultural rights was in any case of progressive application. In the other covenant the system of periodic reports would make no sense if the obligation was absolute and immediate. The opposition to the article was therefore unwarranted, since everyone subscribed to the principle of self-determination.

Aid to flood victims (continued)

36. The CHAIRMAN read a letter from the Secretary-General to the effect that he had conveyed to the Directors-General of the World Health Organization and the Food and Agriculture Organization of the United Nations and to the Executive Director of the United Nations Children's Fund, the Third Committee's hope that the resources of their respective agencies would be made available as far as possible for the relief of the victims of the flood disasters in Costa Rica and Panama.[/] A representative of the United Nations Children's Fund was already in the disaster area to determine the extent of the needs which international assistance might help to meet.

The meeting rose at 1.15 p.m.

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