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Fifth Session

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(discussion continued)

<b>Chairman:</b>	Mrs. ROOSEVELT	United States of America
<b>Rapporteur:</b>	Mr. MALIK	Lebanon
<b>Members:</b>	Mr. HOOD	Australia
	Mr. WOULBROUN	Belgium
	Mr. CHANG	China
	Mr. SOERENSEN	Denmark
	Mr. LGUTFI	Egypt
	Mr. CASSIN	France
	Mr. GARCIA BAUER	Guatemala
	Mrs. MEHTA	India
	Mr. ENTEZAM	Iran
	Mr. INGLES	Philippines
	Mr. KOVALENKO	Ukrainian Soviet Socialist Republic

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Members (continued):

Mr. PAVLOV	Union of Soviet Socialist Republics
Miss BOWIE	United Kingdom
Mr. MORA	Uruguay
Mr. VILFAN	Yugoslavia

Representative of a Specialized Agency:

Mr. ARNALDO	United Nations Educational, Cultural and Scientific Organization (UNESCO)
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Consultants from Non-Governmental Organizations:

<u>Category A:</u>	Miss SENDER	American Federation of Labor (AF of L)
	Mrs. MEAGHER	World Federation of Trade Unions (WFTU)
<u>Category B:</u>	Mrs. ALETTA	Catholic International Union for Social Service
	Mr. STEINER	Commission of Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. BERNSTEIN )	Co-Ordinating Board of Jewish Organizations
	Mr. FRIEDMAN )	
	Mr. Max BEER )	The International League for the Rights of Man
	Mr. SCOTT )	
	Mr. RENNIE	World Jewish Congress

DRAFT COVENANT ON HUMAN RIGHTS. MEASURES OF IMPLEMENTATION: RECOGNITION OF THE RIGHT OF INDIVIDUALS AND ORGANIZATIONS TO PETITION (E/800, E/CN.4/292, Part I, Chapter 2; E/CN.4/299)(discussion continued)

The CHAIRMAN recalled that, two days previously, the Commission had postponed the vote on whether provisions granting individuals and organizations the right to petition should be included in the Covenant. As she saw it, the opinions expressed on that matter had fallen into three groups: some members considered that the right of individuals and organizations to petition should be recognized immediately; others would prefer the Covenant to make no mention of that right; others again did not wish it to be mentioned as yet.

The Secretariat had prepared, purely by way of a suggestion, a draft resolution (E/CN.4/299) based on the ideas put forward during the discussion by the members of the Commission.

/Mr. INGLES

Mr. INGLES (Philippines) said he would sponsor the draft resolution prepared by the Secretariat, and formally submitted it to the Commission.

In his opinion, it was undeniable that sooner or later provisions granting individuals and organizations the right to petition should be included in the Covenant; the Covenant was designed to ensure the protection of human rights in practice, and the necessary means to that end must therefore be provided in it.

The draft resolution prepared by the Secretariat raised two questions:

- (1) Should the provisions relating to the right of petition be included in the Covenant immediately, or at some later date?
- (2) What were those provisions to be?

In his view, the granting of an opportunity to individuals and organizations to exercise the right to petition in an effective manner was a purpose which should be achieved.

Transitional measures would have to be taken so that the system could start functioning. It was necessary to consider whether the same court would deal with complaints entered by States and with petitions from organizations and individuals, or whether two separate bodies would operate, or again, whether the court which considered the complaints of States would also temporarily deal with petitions, until the latter could be examined by a special body. Another question to be decided was whether the court would receive petitions from organizations and individuals directly, or whether petitioners must have had recourse to all the means available to them at the local and national level before referring their case to the international body.

The Philippine delegation would favour the last method, which would admit direct petitions in only two cases: first, when they came from the peoples of Non-Self-Governing Territories and in particular from those of the Trust Territories,

to whom the Charter had accorded the right of direct petition, and, secondly, when they concerned violations of human rights perpetrated on a vast scale, as had been the case under the totalitarian regimes.

In adopting the draft resolution prepared by the Secretariat, the Commission would in no way be prejudicing its decision on the methods for the presentation and consideration of petitions.

Mr. CHANG (China) thought the only question which arose was whether or not provisions relating to the right of individuals and organizations to petition should already be included in the Covenant. A vote on the draft resolution prepared by the Secretariat would make clear the position of the members of the Commission on that point.

Nevertheless, in view of the comments made by the representative of the Philippines, there was some excuse for wondering whether a vote on the draft resolution would be a vote for the adoption of the principle of petitions, while at the same time postponing the establishment of the means whereby that principle would be put into practice to a later date, or whether, on the contrary, as he himself understood it, it would be a vote for the immediate inclusion in the Covenant of provisions guaranteeing individuals and organizations the exercise of the right thus conferred upon them.

He asked the Chairman to give a ruling on the meaning to be attached to the draft resolution drawn up by the Secretariat.

The CHAIRMAN admitted that the question was a very delicate one; she could only urge the members of the Commission to give careful consideration to the meaning of the decision they were about to take.

In answer to a question from the representative of Lebanon, she recognized that discussion on the substance of the matter had started once more; but that was a desirable state of affairs, for the meaning of the draft resolution would thus become clear to everyone.

Mr. MCRA (Uruguay) observed that some members were perhaps ready to accept the principle of individual petitions, without at the same time wishing to include provisions to that effect in the Covenant. He considered, therefore, that there should be two votes, one on the

principle of individual petitions and the other on the question whether provisions to that effect should be included in the Covenant.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that the Commission had agreed to examine the Secretary-General's memorandum (E/CN.4/292), simply so as to determine the order in which the questions would be considered; at the same time he noted that, although it had only just opened discussion on the second chapter of the memorandum, the Commission was already being led to make substantive decisions.

He thought that for the time being the Commission's decisions should concern procedure only, without in any way binding governments on substantive questions. He invited the members of the Commission to keep to the method of work they had adopted; if that method were discarded, he saw no reason for examining one single proposal, while ignoring all the others.

The CHAIRMAN recalled that the Commission had already decided to recognize the right of States to enter complaints, and that what had to be done now was to recognize a similar right for individuals and organizations. Until those decisions of principle had been made, the second part of the memorandum could not be considered.

Mrs. MEHTA (India) emphasized the capital importance of the right to petition, on which, in her opinion, the whole question of implementation turned. If that right was rejected, there would be no point in establishing a new body to guarantee the protection of human rights, since the necessary machinery had already been set up for the settlement of disputes between States.

Mr. CASSIN (France) persisted in believing that the Commission had made a mistake in departing from the proposal of the working group, given at the beginning of Chapter 2 of Part I of the memorandum. As the representative of Denmark had pointed out, those who wished to accord the right to enter complaints to States only should have submitted an amendment proposing the deletion of the second part of the working group's proposal.

The Commission had before it a text which did not allow it to make a clear pronouncement. In order to answer the preoccupations of the representatives of Uruguay and the Philippines, he proposed that the draft resolution prepared by the Secretariat should be amended as follows: "The Commission on Human Rights resolves that provisions for individual and group petitions should be included among the measures of implementation at this time." A member of the Commission would then be able to ask for a division of the vote, so that the last words, "at this time", could be put to the vote separately and the significance of the vote would emerge more clearly.

He agreed with the representative of the USSR that the Secretariat memorandum in no way prejudiced the position of the Commission, but he thought that it was the Commission's right, nay duty, to make known its position with regard to certain essential principles.

The CHAIRMAN was in favour of putting to the vote the text proposed by France: "The Commission on Human Rights resolves that provisions for individual and group petitions should be included among the measures of implementation at this time."

In answer to a question from the representative of China, who wished to know whether the measures of implementation in question would be inserted in the Covenant itself or would constitute a separate protocol, she explained that the Commission had not yet taken any decision on the subject and emphasized that the French proposal did not prejudice that question.

Mr. HOOD (Australia) was afraid that the French proposal, which tended to separate the question of principle and the effective implementation of that principle, would raise certain difficulties. In fact, should the Commission accept the first part of the French text, i.e., the principle of including in the measures of implementation provisions relating to the right of individuals to petition, and should it reject the second part, which provided for the immediate application of that principle, it would find itself in exactly the same position as before the vote; it would still not have begun its real task, which was to prepare measures for the implementation of the Covenant on Human Rights.

Following a remark by Miss BOWIE (United Kingdom), the CHAIRMAN recalled that the Commission had decided to communicate its majority opinion to Governments, for their information, accompanied by the various proposals which had been put before it. The members of the Commission must therefore make their decision immediately, but a decision of principle only, which would in no way tie them to any particular concrete solution. The question would be taken up again by the Commission later on, after the replies of Governments had been received.

Mr. PAVLOV (Union of Soviet Socialist Republics) noted that, instead of keeping to the procedure it had decided on, i.e. instead of making a general study of the Secretariat memorandum and deciding on the order in which the various problems would be considered, without taking any decision on substantive questions, the Commission was trying to take a substantive decision on a particular matter, chosen quite arbitrarily from a considerable number. Naturally, in the absence of a full and detailed discussion of the problem as a whole, representatives were faced with the greatest difficulty in making any decision one way or the other.

Mr. MALIK (Lebanon) observed that the Commission had not departed from the procedure it had decided on at the start. After examining Chapter 1 of Part I of the Secretariat memorandum, relating to the right of signatory States to enter complaints, the Commission had now reached Chapter 2, entitled "Proposals relating to the question of the right of individuals, or groups of individuals and of organizations to petition". Obviously, in order to be able to study that question, the Commission must first make a decision of principle regarding the inclusion of that right among the measures for the implementation of the Covenant; however, such a decision in no way prejudiced the attitude of members with regard to the international machinery which might be set up with a view to the implementation of the right of individuals and groups to petition.

Turning to the substance of the matter, Mr. Malik emphasized that it was essential that provisions relating to the right of individuals and groups of individuals to petition should be included among the measures for the implementation of the Covenant. In his opinion, it would be inadmissible to guarantee such a right to States alone, when the question at stake was the defence of rights which belonged not to States as such, but to the individual.

/Miss BOWIE

Miss BOWIE (United Kingdom) was afraid that the representative of Lebanon's last remarks might give rise to certain misunderstandings. Of course, no one denied that human rights were the attribute of the individual, who enjoyed those rights within the framework of the State. Nevertheless, certain Governments considered that it would be imprudent to guarantee forthwith, to individuals and groups of individuals, a right to petition in the case of any violation of those rights, and that it would be preferable to make the experiment with the States themselves, which would act as an intermediary in the defence of individuals and groups of individuals who were the victims of violations of human rights.

Mr. CHANG (China) feared that the French proposal had serious disadvantages, in that it tended to separate the principle from its realization in practice. If the first part of the French text were accepted and the second rejected, the sole result of such a decision would be to awaken great hopes throughout the world, only to disappoint them immediately after. The members of the Commission must not forget that a Covenant on Human Rights was not to be compared with a Universal Declaration of Human Rights; a covenant was a treaty which the signatory States undertook to put into effect.

Mr. GARCIA BAUER (Guatemala) declared that the Covenant on Human Rights could not attain its full value unless the measures of implementation included provisions relating to the right of individuals and groups of individuals to petition. That right had already been recognized in many parts of the world; for example, the Inter-American Tribunal heard complaints put forward by individuals. The United Nations could not do less. It had been established, not only to maintain peace in the political field, but also to defend human rights and to put an end to violations of those rights which might constitute a danger to international peace.

Mr. ENTEZAM (Iran) did not think that the solution proposed by France was wholly satisfactory. The French representative seemed to think that if the Commission approved in principle the inclusion in the measures of implementation of the right of individuals and groups of individuals to petition, but thought that it could not be put into effect immediately, it should vote for the first part of the French



text and reject the words "at this time". In point of fact, the deletion of those words in no way altered the meaning of the sentence, which could only signify one thing, namely that the inclusion in the measures of implementation of provisions relating to the right of individuals and groups of individuals to petition, must take place immediately.

For his own part, he considered that it would be preferable to employ a negative formula of the kind proposed by the United States of America and China, and to say, for example: "At the present time, the measures of implementation should not contain provisions relating to the right of individuals and groups of individuals to petition".

Mr. CASSIN (France) recalled once more that the French text was intended solely to meet the view which had appeared in the Commission on Human Rights within the last 48 hours, whereby the Commission should accept the principle of the inclusion, in the measures of implementation, of provisions relating to the right of individuals and groups of individuals to petition, while at the same time recognizing that it could not be done immediately.

The French delegation thought it was advisable to take up a position of principle in the matter, in view of the fact that the type of international machinery which would be set up to deal with complaints regarding violations of human rights would necessarily differ, according to whether the complaints came from signatory States only, or from individuals and groups of individuals as well.

Mr. CHANG (China) suggested that the vote on that question should be postponed, so that a more thorough discussion of the proposals and suggestions which had just been submitted could take place.

The CHAIRMAN said that before postponing the vote the Commission should know what proposals it was dealing with.

Mr. PAVLOV (Union of Soviet Socialist Republics) stated that if a vote was taken immediately the Commission should also vote on a negative formula, as the representative of Iran had suggested. In that case, the measures of implementation would also have to be specified; if they referred only to measures taken by the States in their own territory, the USSR delegation would vote in favour of such text.

Mr. Pavlov did not share the opinion of the representative of Guatemala that human rights would be seriously endangered if the Commission did not adopt definite provisions concerning measures of implementation. In his opinion, only those States in which human rights were not respected were anxious to receive guidance and assistance from the Commission on Human Rights.

Mr. SOERENSEN (Denmark) pointed out that the Commission should be able to vote without difficulty on the question. The situation had now become perfectly clear.

The difficulty pointed out by the Iranian representative could be overcome if the French proposal as a whole was put to the vote and if a delegation proposed the replacement of the words "at this time" by the words: "in the course of future developments in the field of human rights".

For that reason, Mr. Soerensen would not support the Chinese proposal to postpone the voting on that question.

Mr. MALIK (Lebanon) recalled that the vote on that question had already been postponed twice; each member knew what position he would adopt with regard to the proposal before the Commission. The hesitation of some of the members was due only to the fact that the result of the vote would probably show that they were more or less equally divided. Obviously a decision on such an important question could be taken only after the final text had been very carefully examined. That examination had taken place and the situation was clear: the principle according to which States would be able to submit complaints in respect of the violation of human rights had already been adopted, although the Commission had not decided on the procedure to be followed to deal with such complaints. It must now be decided whether the right to submit complaints and petitions should be extended to groups or to individuals. Such a decision of principle could likewise be taken without, for the moment, deciding on the procedure to be followed.

For that reason, Mr. Malik thought it would be better not to postpone a decision on that question.

Mr. CHANG (China) felt that the matter was important, and that the Commission should try to agree on an adequate text before voting on it.

/He recalled

He recalled that the representatives of Guatemala and of Iran had submitted suggestions which introduced new ideas. The representative of Iran had shown that a text might well be drafted in a negative form. Mr. Chang wondered whether the French representative could not accept the suggestion of the Iranian representative.

Mr. CASSIN (France) said he could not modify his proposal, but suggested that the Chinese representative submit as his own the amendment referred to by the Danish representative in order to give the French proposal a negative sense.

Mr. CHANG (China) withdrew his proposal to defer the vote and suggested that the French proposal should be amended to read as follows: "Resolves that provisions for individual and group petitions shall not be included in the measures of implementation at this time".

Mr. ENTEZAM (Iran) accepted the text proposed by the Chinese representative.

The CHAIRMAN put to the vote the amendment submitted by the representative of China.

Mr. GARCIA BAUER (Guatemala) asked that the vote be taken by roll-call.

A vote was taken by roll-call, as follows:

In favour: China, Egypt, Iran, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, United States of America, Yugoslavia.

Against: Australia, Denmark, France, Guatemala, India, Lebanon, Philippines, Uruguay.

The amendment was not adopted, the result of the vote being 8 votes in favour and 8 against.

Mrs. MEHTA (India) wondered what would be the position of the Commission if, after rejecting the amendment submitted by China, it also rejected the original French proposal.

Mr. GARCIA BAUER (Guatemala) drew the Commission's attention to the importance of the point raised by the Indian representative.

/The CHAIRMAN

The CHAIRMAN explained that, if the French proposal was also rejected, the Commission could then consider any new proposal submitted by any of its members.

Mr. CASSIN (France) thought that, if his proposal was also rejected, the Commission should place before all Member States the alternative indicating, in each case, the procedure to be adopted.

Mr. Cassin requested that the vote be taken by roll-call.

Mr. PAVLOV (Union of Soviet Socialist Republics) recalled that the Commission also had before it a Philippine proposal. That proposal, to the effect that the provisions concerning the right of individuals or groups of individuals to petition should be included in the Covenant on Human Rights, went much further even than the French proposal. Consequently, if the latter was rejected the Philippine proposal should be put to the vote.

Mr. INGLES (Philippines) said that he would vote for the French proposal but that if it was rejected his own proposal should then be put to the vote.

Mr. MALIK (Lebanon) requested that the French proposal should be put to the vote in parts, the first part being up to and including the words: "in the measures of implementation" and the second part being the words "at this time".

Mr. CHANG (China) pointed out that those who voted against the second part of the French proposal would likewise have to vote against the first part because, in a matter of such importance, the question of principle could not be separated from that of procedure. It was not possible to proclaim to the world that the right of petition by individuals and by groups of individuals was recognized, and at the same time declare that that right could not be exercised. The procedure making it possible to exercise that right had not yet been established. Consequently, the first part of the French proposal should be rejected for the same reason as the second part.

A vote was taken by roll-call on the first part of the French proposal as follows:

In favour: Australia, Denmark, France, Guatemala, India,  
Lebanon, Philippines, Uruguay.

/Against:

Against: China, Egypt, Iran, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Yugoslavia.

The first part of the proposal was not adopted, there being 8 votes in favour and 8 against.

The CHAIRMAN stated that as the first part had not been adopted, the French proposal as a whole lost its meaning.

She put to the vote the Philippine proposal.

Mr. GARCIA BAUER (Guatemala) asked that that proposal should be put to the vote in parts, the first part comprising only the words: "at this time", and the second part the remainder of the text.

The CHAIRMAN put to the vote the first part of the Philippine proposal.

The first part was rejected by 8 votes to 6, with one abstention.

Mr. GARCIA BAUER (Guatemala) asked that a roll-call vote be taken on the second part, reading as follows: "Resolves that the covenant on human rights should include provisions for individuals and groups of individuals to petition".

A vote was taken by roll-call on the second part as follows:

In favour: Australia, France, Guatemala, India, Lebanon, Philippines, Uruguay.

Against: China, Egypt, Iran, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, United States of America, Yugoslavia.

Abstentions: Denmark.

The second part of the Philippine proposal was rejected by 8 votes to 7, with one abstention.

The meeting rose at 1 p.m.