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COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND FORTY-FIFTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 16 May 1951, at 4.45 p.m.

CONTENTS:

Draft International Covenant on Human Rights and
Measures of Implementation (item 3 of the agenda):

- (c) Consideration of provisions for the receipt
and examination of petitions from individuals
and organizations with respect to alleged
violations of the Covenant - studies of questions
relating to petitions and implementation
(E/CN.4/617, E/CN.4/617/Add.1, E/CN.4/621,
E/CN.4/633, E/CN.4/NGO/26)
(resumed from the 243rd meeting)

Note: The 244th meeting of the Commission was held in private in
accordance with resolution 75 (V) of the Economic and Social
Council as amended by resolution 275 (X). The Summary Record
is therefore being distributed only to members of the Commission
on Human Rights. (see document E/CN.4/SR.250, pages 18-20).

Present:

Chairman:

Mr. MALIK (Lebanon)

Members:

Australia	Mr. WHITLAM
Chile	Mr. SANTA CRUZ
China	Mr. YU
Denmark	Mr. SÖRENSEN
Egypt	AZMI Bey
France	Mr. CASSIN
Greece	Mr. EUSTATHIADES
Guatemala	Mr. DUPONT-WILLEMIM
India	Mrs. MEHTA
Pakistan	Mr. WAHEED
Sweden	Mrs. NÜSSEL
Ukrainian Soviet Socialist Republic	Mr. KOVALENKO
Union of Soviet Socialist Republics	Mr. KOROSOV
United Kingdom of Great Britain and Northern Ireland	Miss BOWIE
United States of America	Mrs. ROOSEVELT
Uruguay	Mr. CLASULLO
Yugoslavia	Mr. JEVREHOVIĆ

Representatives of specialized agencies:

International Labour Organisation Mr. PICKFORD

Representatives of non-governmental organizations:

Category A

International Confederation of
Free Trade Unions

Miss SELDER

Representatives of non-governmental organizations (continued):

Category A (continued)

International Federation of Christian Trade Unions	Mr. EGGERMANN
World Federation of United Nations Associations	Mr. ENNALS

Category B and Register

Caritas Internationalis	Mr. PETERKIN
Catholic International Union for Social Service	Miss de ROMER Mrs. SCHRADER
Consultative Council of Jewish Organizations	Mr. KOSKOWITZ
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
International Council of Women	Miss GHOD
International Federation of Business and Professional Women	Miss TOMLINSON
International Federation of University Women	Miss ROBB
International League for the Rights of Man	Mr. BALDWIN Mr. GRANT
International Union of Catholic Women's Leagues	Miss de ROMER Miss ARCHINARD
Liaison Committee of Women's International Organizations	Miss ROBB
World Jewish Congress	Mr. BIENENFELD Mr. RIEGNER
World Union for Progressive Judaism	Rabbi MESSINGER

Secretariat:

Mr. Schwelb	Representing the Secretary-General
Mr. Das	Secretary to the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(item 3 of the agenda):

- (c) Consideration of provisions for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the Covenant - studies of questions relating to petitions and implementation (E/CN.4/617, E/CN.4/617/Add.1, E/CN.4/621, E/CN.4/633, E/CN.4/NGO/26) (resumed from the 243rd meeting)

Article 38 (continued)

The CHAIRMAN invited representatives to resume consideration of the Indian proposal relating to a new article (38a) (E/CN.4/617, page 9), and the Guatemalan amendment thereto (E/CN.4/633).

Mr. BIENENFELD (World Jewish Congress), speaking at the invitation of the CHAIRMAN, observed that the private meeting which the Commission had just held served as evidence of the fact that the right of petition to the United Nations was recognized by the United Nations. However unsatisfactory the procedure might be, it was a fact that all States, including those who commonly opposed the procedure, conceded that the right to petition existed, and that the United Nations must deal with petitions.

The Greek representative had pointed out that the existing situation would in no way be changed even if articles 33-41, dealing with implementation, were dropped from the draft Covenant, since every government party to a convention or treaty had the right to ask another government for clarification or information when it had reason to suppose that the latter was not fulfilling its treaty obligations. Thus, if all the articles relating to the Human Rights Committee were deleted, a State could still lodge a complaint about alleged non-observance of the Covenant, either through normal diplomatic channels or through the Economic and Social Council. The sole purpose of the articles on implementation was to allow individuals and non-governmental organizations to bring to the notice of the Human Rights Committee any violation of the provisions of the Covenant. If that right were denied, implementation would cease to have any meaning. He (Mr. Bienefeld) was unable to visualize circumstances in which one

State would bring a complaint against another t. the notice of the Human Rights Committee. Friendly relations between two States pre-supposed the use of the normal channels, and, if relations happened to be unfriendly, it was unlikely that a State would prefer the cumbersome procedure of applying to the Human Rights Committee and waiting two years for a decision to the more expeditious procedure of bringing the matter before the Economic and Social Council, the General Assembly or the Security Council. He was forced to the conclusion that the Human Rights Committee would not be able to function unless the right to petition of individuals and organizations was recognized.

Turning to the Indian proposal for a new article (38A) he would point out that the text did not state that the Committee must deal with petitions. It read, "The Committee shall have the power" . That meant that the Committee would not be obliged to consider frivolous petitions or petitions submitted merely for propaganda purposes.

He must appeal to the United Kingdom and United States representatives, who had opposed recognition of the right of petition, to acknowledge that the situation had changed in consequence of the adoption of the provisions relating to the Human Rights Committee, the members of which would be persons of high standing appointed by one of the supreme tribunals of the world. There must be some measure of confidence in such a body. It was inconceivable that it would accept petitions submitted for propaganda purposes, or that it would work in such a way as to aggravate the existing international tension. It was on that issue of confidence that the Commission must make up its mind. The Indian proposal offered ample safeguard since a petitioner would have first to convince one of the members of the Human Rights Committee that his complaint was well-founded, and that member would then have to secure the agreement of four other members before an investigation could be opened. Such a procedure would do away with the necessity for screening petitions.

Furthermore, the Indian proposal that another additional article should be inserted after article 40 (E/CN.4/621) offered a further safeguard by the use of the term "on its own motion". That, again, answered the arguments of the United Kingdom and United States representatives satisfactorily.

Turning to the suggestion that there should be a special protocol on petitions, he was unable to agree with the French representative, who had claimed that such an instrument would represent at least a small advance in international law. He would, with one diffidence, submit that it would be an advance into a cul de sac. Governments would not ratify such a protocol. They would have no incentive to do so, since the group of fifteen States whose accession would be required to make the instrument effective would expose themselves to the risk of having complaints brought against them, whereas non-signatory States would be able to avoid that risk simply by withholding their signature. The protocol would be a still-born instrument which would undermine the whole conception of the right of petition.

The simplest solution would be to include in the body of the Covenant an article on the right of petition, subject to a reservation. There was a great difference between accepting a reservation and signing a protocol. He was constrained to press that point of view, because it was a fundamental right for the individual that he should be entitled to draw the attention of governments and of the United Nations to complaints about alleged violations of the Covenant. The preamble to the Universal Declaration of Human Rights spoke of rebellion as being man's last resort against tyranny and oppression. The right of petition was, so to speak, a safety valve. If it were denied to the individual, all other human rights would be of no avail.

It had been said that the Commission was a technical body, but he would emphasize that all over the world people were looking to it for protection in the entire field of human rights. They expected the Commission to be an organ that would listen to complaints and take action. He would beg the Commission not to frustrate those expectations and disappoint a great hope.

Miss TOMLINSOY (International Federation of Business and Professional Women), speaking at the invitation of the CHAIRMAN, said that the first question she would be asked on her return to the headquarters of her organization was whether the Commission on Human Rights had taken an affirmative decision with regard to the inclusion in the Covenant of the right of individuals and organizations to lodge petitions, and, if it had, what procedures were to be applied.

She spoke on behalf, not only of legal experts, but also of thousands of women organized in clubs, groups and associations in eighteen different countries. Her organization had devoted much attention to stimulating thought on the important issue at stake, and had succeeded in that task. Although it was deeply conscious of the importance of the content of the Covenant, to which, indeed, it had made a positive contribution, it was now even more deeply concerned with the question of implementation, and especially with the submission, examination and determination of complaints against alleged violations of the Covenant.

The Indian proposal relating to the new article 38A would have her organization's whole-hearted support, since the latter believed that the right of petition should not be restricted to States alone, but should be extended to individuals and to non-governmental organizations in consultative status with the Economic and Social Council. That right should be embodied in the Covenant. Indeed, human rights applied primarily to the individual, and should therefore be part of the individual's responsibility. The acceptance of the principle expressed in the Indian proposal would be an important step forward, since it would mean that the individual's respect for and observance of human rights would be encouraged and his responsibilities in that respect recognized. Moreover, human rights would be protected at international level.

Mr. WAREURG (Co-ordinating Board of Jewish Organizations), speaking at the invitation of the CHAIRMAN, said that both the memorandum submitted by his organization (E/CN.4/NGO.26) and the statements made by the representative who had spoken on behalf of the Board earlier in the session, had made clear that the Board's approach to the problem differed from that of many other non-governmental organizations, in that it supported the proposal for a protocol on petitions. Admitting that the right of petition was fundamental, and that the Covenant, if shorn of all reference thereto, would be little more than another Universal Declaration, his organization still took into account the fact that the discussions, not only in the Commission but also in the General Assembly had shown that a number of States strenuously opposed the recognition of that right. Their apprehensions were, to say the least, exaggerated, and ways and means of getting

round certain major difficulties could undoubtedly be found. But, in the light of that resistance, the French representative was perfectly justified in fearing that the Covenant would remain a dead-letter if the right of petition was included in it. The protocol, by linking up the right of petition with the Covenant, seemed to offer a way out, and his organization had decided, albeit reluctantly, to support that proposal in the hope that the protocol would in time be ratified by so many States that it would become an integral part of the Covenant.

Now, however, the Commission had before it the Guatemalan amendment (E/CN.4/633) to the Indian proposal concerning the new article (38 A), as well as the suggestion made by the Chairman at the 243rd meeting. The latter would seem to offer an acceptable solution. If a general recognition of the right of petition were included in the Covenant, and detailed regulation of that right left for some other instrument to be negotiated in the future, governments would be able to ratify the Covenant and recognize that right without having immediately to accept the obligations of a protocol as well. The fears expressed at the preceding meeting by the French and United States representatives would thus be allayed. A vital principle of international law would have been established, and time made available for its application. That procedure would run exactly parallel with the concept of gradual implementation as applied to economic, social and cultural rights. He therefore warmly supported the Chairman's suggestion.

Mr. VALENZUELA (Chile) did not intend to discuss the doctrinal aspects of the problem, which had already been examined at length. His delegation had more than once had occasion to express itself in favour of the right of individual petition. He would now like to comment on the various texts before the Commission.

To judge from the discussion to which the problem had given rise, it might appear that there remained only one question of principle to be resolved, namely, whether the right of individual petition, either direct or indirect through non-governmental organizations, was to be embodied in the Covenant or in a separate protocol. But if the proposed texts were examined closely, it was evident that there were several other points at issue which still required to be cleared up.

The Indian delegation proposed the inclusion in the text of the Covenant of the general right of direct or indirect petition by individuals, no distinction being made between States parties to the Covenant and other States. On the other hand, the text submitted by the United States delegation would grant the right only to individuals within the territory of a State party to the Protocol.

Again, both the Indian proposal and the Guatemalan amendment covered all non-governmental organizations in consultative status with the Economic and Social Council, whereas the United States proposal included only such non-governmental organizations in consultative status as were approved annually by two-thirds of the States parties to the Protocol.

Thus, in those several texts there were two fundamentally divergent points of view on which the Commission must define its attitude before it could take a decision on the question whether the right of individual petition should or should not be included in the Covenant.

Mr. WHITLAM (Australia) recalled that he had already spoken against the proposal to include in the Covenant a provision granting individuals and non-governmental organizations the right of petition. Cogent arguments in favour of the proposal had been presented during the day, especially by representatives of non-governmental organizations; those arguments appealed not only to the mind but also to the heart. Although he sympathized with the position and with the contentions of their proponents, he must emphasize that in the general conditions prevailing at the present time the position of States was an extremely responsible one. There was a very real and determined opposition to settled and ordered government in the world. States were apt to disintegrate suddenly, largely as a result of the influence of certain very active and vocal revolutionary elements. Australia, which enjoyed an exceptionally harmonious state of order, was apprehensive lest an extension of the right of petition at the present time might exacerbate the general feeling of unsettledness, thus helping the dissident elements in all societies to gain strength.

Some speakers, in particular the representatives of non-governmental organizations, had contended that those fears were exaggerated, but the Commission

was not in a position to pass judgment in the matter. States were still the great societies of the world, both as national entities and as members of the international community. They existed not only to rule, but also to ensure the protection of the people under their control and jurisdiction who owed them allegiance, and even of those within their jurisdiction who did not owe them allegiance.

The moment had not yet arrived to grant the right of petition to individuals. The proper and fundamental procedure for lodging complaints was to do so at government level, whatever the imperfections of the procedure might be. He felt that the Commission should start at that level, and therefore opposed the Indian proposal.

Mr. SÖRENSEN (Denmark) wished to recall his previous position in order to explain the way in which he would vote. When the same question had arisen at the fifth session, he had voted for the principle of the right of individual petition. The Commission had then been equally divided for and against the principle. At the sixth session, he had abstained from voting on the same issue, and had explained his position by referring to the statements made by the United States, United Kingdom and French representatives, who had declared in advance that they would vote against the principle. He had pointed out that it would be unrealistic to draft a Covenant which would not command acceptance by those countries. His position remained the same, and he would therefore abstain once more.

If the Guatemalan amendment was acceptable to those representatives who were unable to support the Indian proposal, he too would vote for it; but he would like the Guatemalan representative to explain certain points raised in connexion with it. As he (Mr. Sörensen) understood it, the Guatemalan amendment was intended, not to oblige all States signatories to the Covenant to accede to the protocol, but rather to ensure that they all recognized that the Human Rights Committee would not be debarred from acting on individual complaints from States which signed the protocol. If his understanding was correct, the amendment should be acceptable to all delegations, although it involved a radical change in the Indian proposal.

He was not in favour of setting out the principle of the right of individual petition in more direct terms. To do so would not solve the problem confronting the Commission, nor would it grant individuals and non-governmental organizations the right of petition; indeed, it would make those States which did not accept the principle reluctant to sign the Covenant. The Commission could not go further than the Guatemalan amendment if it wished the Covenant to gain wide acceptance.

The technical questions raised by the Chilean representative were relevant. He (Mr. Sørensen) submitted that the Commission should act on the Indian proposal on the understanding that, if it were adopted, further provisions on the lines of the protocol proposed by the United States delegation would have to be added. If it was not adopted, the matter could remain in abeyance until the protocol came up for consideration.

Mr. JEVREMOVIĆ (Yugoslavia) explained that his position on the specific matter under discussion was based directly on his delegation's general attitude. He appreciated the desire of the non-governmental organizations to contribute to the cause of implementation, but felt that, at the current stage, the Commission could not recognize the right of petition to individuals and non-governmental organizations in the Covenant itself.

His basic position with regard to implementation was that not every violation of human rights would entitle the international community to intervene in the domestic affairs of a State; only violations which constituted a threat to peace would warrant such action. Thus only in the latter case would international intervention and action through the Human Rights Committee be justified. The fundamental objective of the United Nations, as proclaimed in the Charter, was the maintenance of peace and security throughout the world, which was in itself a sufficiently difficult task. If the Commission overburdened the United Nations and its organs with functions of the type falling within the competence of a kind of international court of human rights, it would leave those bodies with less energy for their efforts to maintain peace and security. It was therefore obvious that the right of petition could only be granted through domestic legislation.

Some representatives had argued that a State would not always be willing to lay a complaint against another. Such cases might indeed occur but, if circumstances were such as to prevent a State from complaining, he doubted whether petitions from individuals or from non-governmental organizations would in any way contribute to the maintenance of international peace and security; on the contrary, they would only tend to increase friction. It might be possible in the future to establish an international tribunal to consider complaints from individuals and non-governmental organizations, but for the time being the Commission should limit its objective, and make every effort to avert a new war and to discourage preparations in that direction. He was therefore in favour of limiting the right of petition to States alone.

Mr. EUSTATHIADES (Greece) said that every possible argument for and against the right of individual petition had now been advanced during the discussion. But a new factor had come into play: some delegations, conscious of the realities of the present international situation, had changed their position, and were now somewhat hesitant to recognize the right of individual petition.

Their new attitude was the result of the realization that the granting of the right of petition to individuals or groups of individuals was hardly conceivable unless the system was universal; and that could not be expected to be the case.

Ideally, the recognition of that right would undoubtedly be a great step forward. But in practice, would there not be some risk of its jeopardising the whole of the measures envisaged?

With the adoption of the Covenant, two fundamental stages in the evolution of international law would be accomplished. In the first place, the responsibility of States for loss or damage to person or property, which had hitherto existed only in respect of aliens, would henceforth extend to all persons, including nationals of the State in question. That was a radical change. Again, in the matter of diplomatic protection, up to the present only the State of which the individual concerned was a national could claim to exercise that protection.

Henceforward, the number of States entitled to intervene on behalf of a given individual would be extended to cover all contracting States. Hence, the danger of the brake being put on the implementation of the measures designed to protect human rights was diminishing as the number of States at liberty to intervene increased.

The Covenant would also provide for the setting up of an independent, sovereign body, the members of which would be appointed by the International Court of Justice, to supervise the observance of human rights.

If those two vital stages were to be achieved without a hitch, it would be advisable not to introduce at the present juncture a third stage, namely, the recognition of the right of individual petition. If that right were granted forthwith a number of States might hesitate to accede to the Covenant. He cited the instance of the Rome Convention on the Protection of Human Rights and Fundamental Freedoms, which, notwithstanding the common concept held by European States, did not recognize the right of individual petition. It had been considered that the system of the optional clause, which corresponded fairly closely to the idea of the separate protocol, went far enough.

The compromise proposal submitted by the Guatemalan delegation was most interesting, and might conceivably be of decided moral value. But it involved no new legal obligation, and the psychological factors on which it was based might possibly turn out to have just the opposite effect to that intended. Hence it would be wiser to keep to the method of the separate protocol.

Mrs. MENTA (India) said that, if the Commission was going to revise the Covenant on the basis of fears and suspicions, it might as well throw up its work altogether. If international measures of implementation merely meant that States could lodge complaints against other States, the whole idea was pointless. The Commission had the experience of the League of Nations behind it, and if there had been no improvement through the years in spite of the dreadful experience of the recent war, there was little point in going on with the work. The Commission had been established to protect the rights of the individual; but if the individual could not be trusted, he did not deserve to have his rights protected.

The principle of reciprocity applied to the entire Covenant. Article 2 of the Universal Declaration of Human Rights stated that the rights therein set out applied to all individuals within the jurisdiction of a State; it did not differentiate between nationals and non-nationals. If only a few States signed the Covenant they would be penalized, because they would have to grant equal rights to all individuals, including nationals of States which did not sign the Covenant. Unless some solution could be found to the problem of reciprocity, she feared that some States would hesitate to sign the Covenant. She therefore submitted that the Commission should endeavour to reach a compromise with States hesitant to sign, although, of course, it could not compromise on the matter of principle.

Her proposal empowered the Committee to initiate enquiry, but did not oblige it to do so. She recalled that the Commission had exercised extreme care in drafting the provisions relating to the membership of the Human Rights Committee; members would have to be elected by the International Court of Justice. And since the Committee was to be an impartial tribunal, there was no reason to be afraid of giving it authority to decide whether it should initiate an enquiry into complaints lodged by individuals or non-governmental organizations. If the Human Rights Committee could not be trusted, the Commission might as well abandon its efforts.

She urged the adoption of her proposal but, if it did not command majority support, she was prepared to accept the Guatemalan amendment.

Mrs. ROSSEL (Sweden) supported the Indian proposal. Her position was the same as that adopted by the representatives of the Swedish Government during the debates on the subject in the General Assembly. The power to initiate enquiries was not only important in itself but was also a basic pre-requisite for the entire programme of implementation.

Mr. DUPONT-WILLEMEN (Guatemala) said that, basically, his delegation's position had remained unchanged for two years. It still considered that the principle of the right of individual petition should be written into the Covenant, and not embodied in a separate protocol. His delegation had only submitted an amendment to the Indian proposal in order to overcome the difficulty of including the right of individual petition in the Covenant at the present stage.

He confirmed the interpretation placed on his amendment by the Danish representative, namely, that States signatories to the Covenant would not be obliged to accede to the protocol, but that those who had so acceded would have to accept any enquiry that was decided on by the Human Rights Committee.

He asked whether his amendment could be submitted as a separate proposal and thus put to the vote after the Indian proposal, in accordance with rule 61 of the rules of procedure.

Mr. MOROSOV (Union of Soviet Socialist Republics) thought that if only part of the energy displayed during the debate in giving expression to lofty sentiments and world-shaking ideals had been devoted to supporting positive proposals genuinely designed to guarantee the fulfilment of the Covenant's provisions, the Commission might have made some progress.

Representatives who for the past few weeks had stubbornly resisted proposals designed to ensure the actual implementation of economic, social and cultural rights, had, so soon as article 38 A had come up for discussion, changed their tactics and turned to a question which in substance bore no relation whatever to the problem of implementation and even ran counter to it.

To illustrate his point, he recalled that his delegation had submitted an article stipulating that social security and social insurance for workers and salaried employees should be afforded at the expense of the State or of the employer, in accordance with each country's national legislation. That was a simple text which, had it been accepted, would have ensured proper implementation. The Commission had, however, adopted a meaningless formula, namely: "The States Parties to this Covenant recognize the right of everyone to social security." On several occasions constructive proposals tabled by his delegation, and in some cases supported by six or seven representatives, had been rejected, often by a marginal majority, in favour of other obscure, vague and optional clauses. Holding the view that provision must be made for the effective implementation of all rights, whether civic, civil, political, economic, social or cultural, he had made certain comparisons in order to show how some delegations were attempting to substitute other quite irrelevant issues for the question of implementation.

The substance of article 38 A as proposed by the Indian delegation was in direct contradiction to the Charter. The first few words of the proposal "The Committee shall have the power to initiate an enquiry" already exposed the illegal nature of the Committee as visualized. It was evident from the Charter that such powers of enquiry had never been granted to any United Nations organ with the exception of the Security Council (Article 34 of the Charter). Some representatives had probably been genuinely led astray by the proposal, but others were well aware of the distinction between true and effective implementation on the

one hand, and false and hypocritical implementation, designed to increase friction, on the other.

The Indian proposal was plainly at variance with the Charter, because it represented an attempt to put the Human Rights Committee on the same footing as the Security Council, which was a special organ of the United Nations, set up to discharge special functions and governed by special conditions and procedures. If the proposed power of inquiry were bestowed upon the Committee, that would represent a crude form of interference in the domestic affairs of States. That was obviously perfectly well realized by those delegations which, although maintaining that the principle was excellent, nevertheless opposed its inclusion in the draft Covenant on the ground that they would be unable to ratify that instrument in its final form.

Attempts had been made to prove that to grant the right of petition to individuals and to non-governmental organizations, thus enabling them to challenge the decision of a national court, would be a normal and natural proceeding, and would indeed represent a certain measure of progress in international law, since it would make a breach in the barriers of national sovereignty. Some representatives had asserted that there was no contradiction involved. The French representative had even quoted the French Constitution, which apparently provided that France might waive certain of her national rights on a basis of reciprocity. Current facts concerning France showed that that principle had in practice been extended; some French statesmen seemed prepared in some cases to abandon national sovereignty without any reciprocity at all. For example, citizens of a certain country were entitled to land in France without a visa, whereas a French citizen wishing to visit that country could not travel beyond a certain island lying off its coast without a valid visa. If that was what the French representative regarded as reciprocity, the Soviet Union for one would never be able to accept the idea.

He could not support a proposal which ran counter to the principle of the inviolability of national sovereignty, not because of any fear of the complaints that might be forthcoming, but because there were certain provisions which could

not conceivably be violated. It would therefore be illegal for the Human Rights Committee to assume the functions of enquiry proposed for it.

The position of the French representative had indeed changed; for long he had maintained that the Committee should have absolute powers under the Covenant, but now he was against the inclusion of the Indian proposal, although professedly supporting it in principle.

The Soviet Union delegation was opposed, not to the lodging of complaints as such, but to the principle involved. The only case where petitions of that nature were admissible, namely, from Trust Territories, was governed by Article 87 of the Charter. Under that provision, all complaints, no matter how numerous, would be duly studied and acted upon by the competent United Nations organs if submitted through the prescribed channels.

Mr. YU (China) said that the issue at stake involved two main considerations. On the one hand, the right of individuals and non-governmental organizations to lodge petitions was in keeping with the spirit of the Universal Declaration of Human Rights, which was concerned primarily with human beings rather than with States. On the other, it could be asked how far the Commission was prepared to go in embodying those rights in the Covenant. There was the understandable fear that, if such provisions were incorporated, the entire object of the Covenant would be vitiated. His feeling was that, while keeping the ultimate aim in view, the Commission should maintain a realistic approach.

Many of the proposed provisions might find no place in the draft Covenant, and it might be opportune to explore the possibilities of implementing them only in the course of time. In considering the various proposals tabled, he endeavoured to exercise due caution, as the objective was to evolve concepts which would be acceptable to the majority and which could be later amplified by the addition of further provisions in the spirit of the Universal Declaration of Human Rights. The difficulty was to recognize which proposals were capable of commanding acceptance. If he felt that the Indian representative's proposal would prove acceptable to a large number of signatory States, he would support it; but he had no absolute assurance that it would. On the other hand, if he felt that it would

not be accepted, and that its exclusion from the Covenant would not create dissatisfaction among the people of the world, he would support that decision. According to the representatives of non-governmental organizations, however, there was a general feeling that the right of petition by individuals or non-governmental organizations should be recognized. Hence the need to proceed slowly and cautiously.

If it were suggested that certain general articles on the lines of the United States proposal should be incorporated in the Covenant with the idea of including a complete enumeration of economic, social and cultural rights, his delegation would give that proposal careful consideration. In the absence of such clarification, he felt that the Commission should not, by incorporating certain articles only, create a situation which would make it impossible for some States to sign the Covenant.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) recalled that he had already made clear, on a number of occasions, his delegation's general position with regard to the question of implementation as apparently understood by the majority of representatives. He felt that to adopt proposals like that of the Indian delegation would merely add to international friction, instead of strengthening happy international relations. He therefore supported the Soviet Union representative in opposing the Indian text.

The CHAIRMAN felt that he would have to put the Guatemalan amendment to the vote first, because, were the Indian text first rejected, the Guatemalan amendment would automatically fall by the wayside.

Mrs. MEHTA (India) requested that her text should be voted on first. If it were rejected, the Commission could then vote on the Guatemalan amendment as a separate proposal.

AZMI Bey (Egypt), speaking to a point of order, recalled the suggestion he had made at the previous meeting, and proposed the insertion of the word "...., groups" before the words "or non-governmental organizations" in the Guatemalan amendment (E/CN.4/633).

Miss BOWIE (United Kingdom) pointed out that the words "subject to and within the limits of the conditions set forth in the Protocol concerning the examination of such complaints." could not be voted on, because in fact no such protocol existed.

Mr. SØRENSEN (Denmark) suggested the substitution of the words "a Protocol" for "the Protocol".

Mrs. ROOSEVELT (United States of America) remarked that the Danish amendment would not change the situation; the Commission would still not know what the Protocol would contain.

Mr. DUPONT-WILLEMEN (Guatemala) accepted the Danish proposal.

He again asked the Chairman to consider his amendment as a separate proposal and to put it to the vote after the Indian proposal, if the latter were rejected. An alternative solution might be for the Commission to vote separately on the two parts of the Guatemalan text, since the first part merely repeated the Indian proposal.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the Danish amendment would not affect the substance of the Russian version of the text, any more than it did the English version. To accept the Guatemalan amendment would be to assume in advance the obligation of complying with the provisions of a non-existent Protocol, which would be tantamount to signing a blank cheque. Such proposals should be ruled out of order. In previous cases of that sort the Commission had agreed to suspend its decision pending a later decision on the text referred to. In his opinion, the only proposal before the Commission which could be voted on consistently was the Indian text.

Mr. SCHWEIB (Secretariat) drew attention to Article VI of the Convention on Genocide, which somewhat resembled the present case.

Mr. MOROSOV (Union of Soviet Socialist Republics) recalled that he had served as Vice-Chairman of the ad hoc Committee on Genocide, so that he could supply

some details concerning its activities. There had been objections to the text just referred to by the representative of the Secretariat. Article VI had finally been adopted, but there was no analogy between it and the text before the Commission, because it stated that "Persons charged with genocide ... shall be tried by a competent tribunal ... or by such international penal tribunal as may have jurisdiction ...", whereas the Guatemalan amendment contained no such qualification. The Soviet Union delegation had been against the inclusion of that text in the Convention on Genocide, and it had consequently been withdrawn, although re-introduced later in the Sixth Committee at the third session of the General Assembly.

The provisions of the Protocol might well prove satisfactory to many delegations, but representatives could not obligate their Governments to accept it in advance.

The CHAIRMAN, speaking as representative of Lebanon, wondered whether UNDER the terms of the Guatemalan amendment, Lebanon, in the event of her becoming a party to the Covenant but not to the Protocol, and having a complaint lodged against her by an individual or non-governmental organization, would be subject to judgment by the Committee. If not, the point should be made clear in the text by the insertion of some such words as "and in so far as such a Protocol shall be adhered to by the State directly concerned."

Mr. DUPONT-WILLEMEN (Guatemala) repeated that the correct interpretation was that placed on the Guatemalan amendment by the Danish representative, namely, that the Committee could conduct enquiries only in States signatories to the Protocol.

Miss BOWIE (United Kingdom) suggested that the words "the conditions" and "the Protocol" should be replaced by the words "any conditions" and "any Protocol" in the Guatemalan amendment.

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that the Guatemalan amendment prejudged the existence of a protocol on petitions; that was an issue of substance. As he was averse to anticipating the existence of such a

80

protocol, he moved that the discussion on article 38 A be deferred until a protocol on petitions had been adopted. At that time it might be found that the Guatemalan amendment had no further point.

The CHAIRMAN put to the vote the Soviet Union motion for the adjournment of the debate on article 38 A.

The Soviet Union motion was rejected by 6 votes to 2 with 8 abstentions.

The CHAIRMAN considered that, even though the Soviet Union representative's motion had been defeated the point made by that representative that adoption of the Guatemalan amendment would prejudice the existence of a protocol was an important one. The position could perhaps be covered by adding a proviso concerning the possible existence in the future of a protocol concerning the examination of complaints.

Mr. SORENSEN (Denmark) supported the United Kingdom suggestion that the word "any" be substituted for the word "the" before the word "Protocol" in the fourth line of the Guatemalan amendment.

Mrs. ROOSEVELT (United States of America) believed that, in all the circumstances, the best course would be to return to the Indian proposal, and to leave over the proviso relating to the protocol concerning the examination of complaints until such time as a protocol had been adopted.

AMR Bey (Egypt) pointed out that the question of the protocol had not yet been settled. It was, however, essential to lay down conditions concerning the examination of complaints. He therefore proposed the deletion of the words "set forth in the Protocol" from the Guatemalan amendment. The appropriate reference could be added to the text when the Commission had laid down those conditions, whether in the Covenant itself or in a protocol to it.

Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) moved the closure of the meeting.

The Ukrainian motion was adopted by 10 votes to 3 with 4 abstentions.

The meeting rose at 6.50 p.m.