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Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

Draft first international covenant on human rights and measures of implementation (A/1384, A/C.3/534, A/C.3/535 and E/1681) (*continued*)

[Item 63]*

1. The CHAIRMAN opened the discussion on the draft resolutions submitted in connexion with the four questions put to the General Assembly by the Economic and Social Council. Although not all the draft resolutions had as yet been distributed, he was in a position to state that resolutions or amendments had been submitted by the delegations of the following countries: the Philippines and Syria (A/C.3/L.71/Rev.1), Uruguay (A/C.3/L.74 and Add.1), Egypt (A/C.3/L.75), Brazil, Turkey and the United States (A/C.3/L.76), the USSR (A/C.3/L.77/Rev.1), Ethiopia and France (A/C.3/L.78), Yugoslavia (A/C.3/L.79 and A/C.3/L.80), Chile (A/C.3/L.81), France (A/C.3/L.82), Greece and New Zealand (A/C.3/L.83) and Israel (A/C.3/L.84).

2. He suggested that the authors or sponsors of the draft resolutions or amendments should introduce them in turn.

3. Mr. MENDEZ (Philippines) said the purpose of the draft resolution submitted jointly by the Philippines and Syria (A/C.3/L.71/Rev.1) was to do away once and for all with the so-called colonial clause, which constituted a constant source of irritation as well as of embarrassment for the colonial Powers. It was an anachronism in the twentieth century to refuse to grant fundamental human rights to populations of dependent territories.

4. Because the United Nations Charter, in several passages, mentioned human rights and the human person, a new concept had arisen in public international law — that the individual could be the subject of international law. The benefits of the covenant should therefore be extended to human beings everywhere.

5. The Philippine and Syrian draft resolution spoke

for itself. He would stress only two points: from the legal viewpoint, the metropolitan Powers might be regarded as principals, whose international commitments should automatically extend to the colonial territories, which might be regarded as agents. From the moral viewpoint, the inhabitants of the dependent territories were clearly as much entitled to the enjoyment of human rights as anyone else.

6. AZMI Bey (Egypt) pointed out that the draft resolution proposed by his delegation (A/C.3/L.75) dealt with two separate questions.

7. The text it proposed for article 13 in effect merely omitted the reference to the freedom to change religion or belief. Even if the words in question were omitted, the article would still imply the individual's right to change his religion. He wished to make it clear that the Egyptian Constitution guaranteed absolute freedom of conscience and that the amendment was therefore being proposed not to meet the point of view of his delegation but in order to make the article more generally acceptable.

8. In article 14, which dealt with the special duties and responsibilities of the media of information, the Egyptian delegation wished to insert a reference to the maintenance of peace and friendly relations between States. Since those were the main objectives of the United Nations, and since those words had been adopted in a similar text by the United Nations Conference on Freedom of Information held at Geneva in 1948, he did not think that there could be any objection to the addition.

9. Mr. NORIEGA (Mexico), speaking on a point of order, remarked that by the time the last of the numerous draft resolutions before the Committee had been introduced, the arguments adduced in favour of the first would have been forgotten. He therefore suggested that the Committee should discuss and vote on each proposal separately, in the order of submission.

10. The CHAIRMAN pointed out that only two of the draft resolutions — the one submitted jointly by Brazil, Turkey and the United States (A/C.3/L.76)

* Indicates the item number on the General Assembly agenda.

and the one submitted by the USSR (A/C.3/L.77/Rev.1), which had not yet been circulated — covered all four questions put to the General Assembly by the Economic and Social Council.

11. In his opinion, it would be sound procedure if, after both draft resolutions had been circulated and introduced by their sponsors, the Committee decided which of them should be taken as a basis for discussion. The remaining draft resolutions might either be considered as amendments to the relevant points in the draft resolutions thus selected, or be dealt with in any other way preferred by the Committee.

12. Mr. CHANG (China), supported by Mr. KOHN (Israel), suggested that all the draft resolutions should be classified according to the four questions asked by the Economic and Social Council and should be considered in that order.

13. Mr. MENDEZ (Philippines) emphasized that the joint Philippine and Syrian draft resolution (A/C.3/L.71/Rev.1) differed from all the others, inasmuch as it represented a definite instruction to the Commission on Human Rights rather than a general directive.

14. Since it had been submitted earliest, he was unable to agree to its being regarded as an amendment to a resolution submitted subsequently. He therefore asked that it should be considered and put to the vote first.

15. Mr. BAROODY (Saudi Arabia) and Mr. KAYALI (Syria) supported the Philippine representative's suggestion.

16. The CHAIRMAN proposed that the Philippine and Syrian joint draft resolution (A/C.3/L.71/Rev.1) should be discussed and put to the vote first, for the reasons given by the Philippine representative.

17. The two general draft resolutions (A/C.3/L.76 and A/C.3/L.77/Rev.1) could then be introduced by their sponsors and the Committee could vote on the question which of them was to be taken as a basis for discussion.

It was so decided.

JOINT DRAFT RESOLUTION SUBMITTED BY THE PHILIPPINES AND SYRIA (A/C.3/L.71/Rev.1)

18. Mr. BAROODY (Saudi Arabia) said he supported the draft resolution submitted jointly by the Philippines and Syria (A/C.3/L.71/Rev.1) for the reasons which he had stated at the 296th meeting, during the debate on the colonial clause. A majority of those who had spoken in that debate had agreed that the inclusion of a colonial clause would not only be out of place in a covenant on human rights but would actually contravene the purposes and objectives of that instrument and force some 260 to 300 million people to remain beyond its scope.

19. Mr. RODRIGUEZ ARIAS (Argentina) said the draft resolution under discussion was obviously intended to promote respect for human rights.

20. His delegation could support the draft resolution if the following words were added: "bearing in mind in each case the individual characteristics and situation of such territories".

21. Mr. PAZHWAQ (Afghanistan) said that without

the addition of an article such as that suggested by the Philippines and Syria, the draft covenant could not attain universality and would belie or conflict with several articles of the Universal Declaration of Human Rights, notably articles 1, 2 and 28. Moreover, without such an article the human rights provisions set forth in the Charter would not be observed.

22. For those reasons his delegation supported the joint proposal of the Philippines and Syria.

23. Having expressed his support of the proposal concerned, he wished to state that although the joint draft resolution did meet a vital need, namely, the extension of the provisions of the draft covenant to non-self-governing, trust and colonial territories, the draft covenant still suffered from an even graver deficiency: the absence of an article concerning the fundamental right to self-determination, a right which demanded attention in the consideration of the draft covenant as a whole.

24. He invited the attention of the authors of the draft resolution and of the other members of the Committee to the unfortunate consequences of such an omission. The absence of an article relating to self-determination would not only be most injurious to the effectiveness of the draft covenant, but, coinciding as it did with the inclusion of the specific terms "non-self-governing, trust or colonial territories", would lead to a future interpretation to the effect that the Third Committee had not recognized the principle of self-determination as a fundamental human right.

25. Mr. CASSIN (France) said he appreciated the purpose of the sponsors of the draft resolution in question but disagreed with the method they had chosen. In the light of experience, he did not believe that it was sound procedure for the General Assembly to be concerned with the actual drafting of articles of the draft covenant; nor should the Assembly instruct the Commission on Human Rights to insert specified clauses in the draft covenant.

26. He regretted that the Committee had not adopted the Chairman's original procedural suggestion.

27. Mr. BOKHARI (Pakistan) said it was time to end a situation in which, on the one hand, millions of persons were precluded from representation in the United Nations while, on the other, their colonial rulers, by virtue of the colonial clause, were not required to sign in their behalf such instruments as the draft covenant on human rights. The metropolitan Powers must be made to recognize their responsibility towards Non-Self-Governing Territories under their administration, and the joint draft resolution under discussion accomplished that purpose. He was particularly glad that it did so, not in the negative form of proposing the omission of a colonial clause, but by stating the principle in a positive manner. He therefore supported the proposal.

28. He was opposed to the amendment suggested by the Argentine representative because, regardless of and perhaps contrary to the intentions of its sponsor, that amendment could be interpreted as upsetting the very basis of the joint proposal. The words "individual characteristics and situation" might be taken to refer to the constitutional provisions prevailing in the territories concerned, so that a metropolitan Power, by ostensibly claiming that a certain territory was self-governing,

could refuse to apply the provisions of the draft covenant in that territory; in other words, it might be able to use the Argentine amendment as a substitute for the colonial clause.

29. He suggested two amendments for the consideration of the Syrian and Philippine representatives: the substitution of the word "requests" for the word "invites"; and of the words "to request . . . to include" for the words "to recommend . . . the inclusion of". Both of the amendments he suggested were intended to strengthen the draft resolution and to make it clear that it constituted a firm mandate rather than a mere recommendation from the General Assembly.

30. The CHAIRMAN said he understood the sponsors of the joint draft resolution were willing to accept the amendments proposed by the Pakistan representative but that they did not wish to accept the Argentine amendment.

31. Mr. RODRIGUEZ ARIAS (Argentina) said that it had not been his intention to introduce a colonial clause into the Philippine and Syrian draft resolution, but on the contrary to facilitate general acceptance of the covenant, including economic and social rights.

32. As his amendment had not been accepted by the Philippine and Syrian representatives, he withdrew it.

33. Mr. DAVIN (New Zealand) said he could not support the draft resolution under consideration. He preferred paragraph 2 (d) of the draft resolution presented jointly by Brazil, Turkey and the United States (A/C.3/L.76).

34. He disagreed with the argument that failure to include an article such as that proposed by the Philippines and Syria would mean that millions of persons in Non-Self-Governing Territories would be denied their fundamental human rights. The metropolitan Powers had stated that their relations with certain Non-Self-Governing Territories were based on agreements under which the said Territories' consent to international conventions of the kind under discussion had to be obtained. Accordingly, the inclusion of the clause concerned might lead to considerable delay in the ratification of the covenant by some of the metropolitan Powers and might even prevent such ratification altogether.

35. The net effect of the adoption of the joint draft resolution submitted by the Philippines and Syria might be unnecessary delay in extending the protection of human rights contained in the draft covenant to the inhabitants of the metropolitan countries themselves as well as to those of the Non-Self Governing Territories.

36. Mr. GARCIA BAUER (Guatemala) said he would support the Philippine and Syrian joint draft resolution because it gave positive expression to his own delegation's objection to the colonial clause.

37. In that respect he disagreed with the New Zealand representative. States whose domestic legislation prevented them from ratifying the covenant immediately on behalf of their dependent territories could ratify on behalf of the metropolitan country with the reservation that their dependent territories would ratify when ready to do so.

38. Mr. AZKOUL (Lebanon) believed that the French representative's objections — which he himself

shared — might be met by linking the two paragraphs of the draft resolution after changing the wording to read: "the inclusion of an article in the first international covenant on human rights providing that the provisions of the present covenant . . .". The Third Committee was competent only to give a clear directive on substance to the Commission on Human Rights and should refrain from infringing the Commission's competence to draft articles themselves. To attempt to draft the articles might well set a dangerous precedent.

39. Although he would not press his amendment if the sponsors seriously objected to it, he would most strongly oppose any subsequent attempts either to draft texts or to impose them on the Commission.

40. Mr. MENDEZ (Philippines) believed that the indirect approach suggested by the Lebanese representative might give the Commission on Human Rights too much freedom to change the Third Committee's text and perhaps even its substance. The Third Committee must transmit a definite decision to that Commission.

41. Mr. AZKOUL (Lebanon) withdrew his amendment.

42. Mr. PANYUSHKIN (Union of Soviet Socialist Republics) observed that the USSR draft resolution (A/C.3/L.77/Rev.1) included a provision very similar to that embodied in the Philippine and Syrian joint draft resolution, and therefore proposed that the word "equally" should be inserted between the words "applicable" and "to a signatory . . ." in the second paragraph of the joint draft resolution in order to bring both draft resolutions into harmony. The words "and to" would then be substituted for the words "as well as".

43. Mr. MENDEZ (Philippines) and Mr. KAYALI (Syria) accepted the USSR amendment.

44. Mr. CHANG (China) and Mr. LEQUESNE (United Kingdom) proposed minor drafting changes.

45. Mr. MENDEZ (Philippines) accepted those changes.

46. Mr. CABADA (Peru) enquired why the draft resolution was addressed to the Economic and Social Council rather than directly to the Commission on Human Rights, in conformity with resolution 303 I (XI) of the Council itself. The difficulties in which the Committee had become involved had originated in its departure from the instructions laid down in that resolution.

47. Mr. HUMPHREY (Secretariat) explained that recommendations to the Commission on Human Rights were normally transmitted through the Economic and Social Council, but the resolution under discussion could be referred directly to the Commission, which had already received its instructions from the Council in resolution 303 I (XI).

48. Mr. MENDEZ (Philippines) and Mr. KAYALI (Syria) accepted the Peruvian suggestion and amended the first phrase to read: "The General Assembly requests the Commission on Human Rights to include . . .".

49. Mr. MACCAS (Greece) asked whether the Philippine and Syrian joint draft resolution referred to the federal as well as to the colonial clause.

50. Mr. MENDEZ (Philippines) replied that the answer was self-evident.

51. Mr. BAROODY (Saudi Arabia) requested a vote by roll-call.

52. The CHAIRMAN called for a vote by roll-call on the Philippine and Syrian joint draft resolution (A/C.3/L.71/Rev.1), as amended.

A vote was taken by roll-call.

Guatemala, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Guatemala, Haiti, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Burma, Byelorussian Soviet Socialist Republic, Chile, China, Cuba, Czechoslovakia, Egypt, Ethiopia.

Against: Netherlands, New Zealand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, Brazil, Canada, Greece.

Abstaining: Norway, Peru, Sweden, Thailand, Argentina, Denmark, Dominican Republic, France.

The resolution, as amended, was adopted by 30 votes to 11, with 8 abstentions.

53. Miss BERNARDINO (Dominican Republic) explained that she had abstained because, although she had spoken against the colonial clause on the ground that it had not been incorporated in the Charter of the United Nations, she believed that the Commission on Human Rights should have been given the opportunity to consider it once more before it submitted the final draft covenant.

54. Mr. CASSIN (France) regretted that he had been compelled to abstain, although that abstention should in fact be regarded as a pledge that his country would apply the covenant throughout the territories of the Republic. He had been unable to vote for the resolution because he was opposed to the method employed. It was not for the General Assembly at that stage to draft articles for the draft covenant; it would have the final word when the subsequent draft was submitted to it.

The meeting rose at 6.5 p.m.