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Chairman : Mrs. Ana FIGUEROA (Chile).

Draft international covenant on human rights and measures of implementation (A/1883, A/1884 (chapter V, section I), E/1992, E/2057 and Add.1 to 5, E/2059 and Add.1 to 8, E/2085 and Add.1, A/C.3/559, A/C.3/L.88, A/C.3/L.180, A/C.3/L.182) (continued)

[Item 29]*

GENERAL DEBATE

1. The CHAIRMAN opened the general debate on chapter V, section I of the report of the Economic and Social Council (A/1884) and on the report of the Commission on Human Rights (E/1992)¹ concerning the draft covenant on human rights and measures of implementation.

2. Mr. DA COSTA REGO (Brazil) said that the draft international covenant on human rights was complementary to the Universal Declaration of Human Rights adopted at the first part of the third session of the General Assembly in 1948 (resolution 214 (III)). The Commission on Human Rights, which had been asked to draft the covenant, should be thanked for the efforts which it had been making for three years to perform that task; his delegation had always found the Commission's work satisfactory.

3. His delegation had always believed that the individual rights recognized by almost all independent nations should be incorporated in an international instrument, so that they could be held under positive rather than natural law. When the matter of an article relating to federal States² had arisen, Brazil, although itself a federation of States, had said³ that it would raise

no objection to the covenant, even if it did not embody a federal clause.

4. His delegation had, however, emphasized its view that due attention should be paid to the difficulties inherent in the special nature of the legislation of other federal systems and that some formula should be worked out enabling federal States, which had often shown themselves to be enthusiastic defenders of human rights and fundamental freedoms, to adhere to the covenant.

5. The Brazilian delegation had voted in favour of the inclusion of a colonial clause in the covenant, but had done so in the strong belief that such a clause would not deprive the colonial peoples of the full enjoyment of their fundamental rights.

6. His delegation had already stated that it saw no objection to the incorporation of economic, social and cultural rights in a separate covenant. It believed, moreover, that the right of petition should be granted both to individuals and to governments. On the other hand, an article dealing with the right of peoples to self-determination would not, in its opinion, be appropriate in the covenant under consideration, because that principle had already been stated in Article 1, paragraph 2, of the Charter of the United Nations.

7. It was to be hoped that the United Nations would be able speedily to complete a task which would contribute considerably to improving the lot of the peoples by fostering the appreciation of the dignity of the human person.

8. Mrs. ROOSEVELT (United States of America) reminded the Committee that most of the difficulties of the modern world came from the systematic and deliberate violation of human rights, as General George C. Marshall, the head of the United States delegation, had stated at the third session of the General Assembly. All Member States were, in her opinion, under an obligation to see that those rights were respected; and once the Universal Declaration of Human Rights had been

* Indicates the item number on the General Assembly agenda.

¹ See *Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 9.*

² See document A/C.3/559, section VI.

³ See *Official Records of the General Assembly, Fifth Session, Third Committee, 293rd meeting.*

adopted, it was the duty of the United Nations to ensure its implementation by drafting an international covenant on human rights.

9. Although the United States delegation had voted at the fifth session of the General Assembly against the proposal to include economic, social and cultural rights in the same covenant as civil and political rights, it had none the less loyally collaborated during the seventh session of the Commission on Human Rights in drafting the articles relating to the former. At that session it had voted⁴ for the Indian proposal⁵ that the General Assembly should be requested to reconsider the question of a single covenant because there were basic differences between the two categories of rights. She proceeded to outline those differences.

10. First, article 19 of the draft covenant recognized that, unlike the civil and political rights, which the States bound themselves to protect as soon as possible, the realization of the economic, social and cultural rights should be achieved progressively. Such rights as the right to education, to social security, and to adequate housing were long-term aims which required much preparation. Figures showed that almost half a century had been required to make primary education compulsory in the United States of America and to organize health services for the reduction of infant mortality.

11. The second difference lay in the way in which States could fulfil the obligations they undertook. Nothing more than the passing of appropriate legislation was required for the civil and political rights, whereas for the economic, social and cultural rights the assistance of people in general and that of a large number of governmental and non-governmental bodies was needed.

12. Thirdly, the proposed measures of implementation were not the same with regard to both categories of rights. The Commission on Human Rights had proposed the establishment of a committee on human rights to hear complaints by one State against another. It had not had time at its seventh session to decide whether that procedure should also be applied to complaints concerning the violation of economic, social and cultural rights, but the majority of the members had appeared to consider that such a procedure would not be appropriate for those rights the realization of which was to be achieved only progressively and with regard to which the obligations of States were less precise. Those members had believed that it would be better to help States achieve progress in that respect than to enable complaints to be brought against them. The draft covenant therefore provided for the submission of reports with regard to economic, social and cultural rights as the appropriate procedure.

13. Finally, the provisions relating to the two categories of rights had been drafted differently: the civil and political rights had been defined in specific terms,

whereas the provisions relating to the economic, social and cultural rights had been couched in more general language.

14. The United States delegation considered that those fundamental differences between the two categories of rights warranted the drafting of two separate covenants and that much confusion would thus be avoided. She understood the fear lest such separation of the two categories of rights might put one before the other, but such was not the intention of the United States delegation, which considered both categories of rights equally important.

15. She therefore proposed that the United Nations should simultaneously draft two covenants on human rights, which would be equally important and which would be open for signature and ratification by States at the same time.

16. The text of the draft covenant before the Committee naturally lent itself to that procedure; the provisions concerning civil and political rights in parts I, II and IV could form one covenant and parts III and V, which dealt with economic, social and cultural rights, could constitute the other covenant; part VI, which was general, might be included in both covenants. She thought that any other procedure would only serve to delay ratification by a certain number of governments.

17. Mr. GARCIA BAUER (Guatemala) recalled that, in the past year, the Commission on Human Rights and the Economic and Social Council had revised various parts of the draft covenant and drawn up new articles in accordance with the General Assembly's recommendations (resolution 421 (V)); nevertheless, though a tribute should be paid to the efforts made by the Commission on Human Rights and the Council and to the co-operation given them by representatives of the Secretariat, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Labour Organisation and the Office of the United Nations High Commissioner for Refugees, it was unfortunately true that the General Assembly was further away than it had been a year previously from its goal, namely the adoption of an instrument to guarantee the effective implementation of the rights proclaimed in the Universal Declaration of Human Rights.

18. The causes of that situation should therefore be examined and, if necessary, new ways sought to promote the recognition and universal application of human rights. A study of the report of the Commission on Human Rights (E/1992) showed that the Commission had been unable to complete its work within the prescribed time limit and it had been unable to revise the text of the first eighteen articles or to study the questions of the so-called federal clause and the right of peoples to self-determination. Unless methods could be improved, much time would elapse before the Assembly could adopt a covenant; to avoid that long delay, the Council and the Commission on Human Rights should be enabled to complete a final text forthwith.

⁴ See document E/CN.4/SR.248.

⁵ See document E/CN.4/619/Rev.1.

19. The Third Committee should therefore recommend that the Commission on Human Rights might devote the necessary number of meetings in one or two sessions of the forthcoming year to the completion of the draft covenant. The Commission should also be given specific directives, through the Economic and Social Council, on the controversial questions which had to be settled by a United Nations organ in which all the States Members of the Organization were represented.

20. The recommendations of resolution 384 (XIII) of the Economic and Social Council had to be taken into consideration; it would be advisable to specify whether the Commission should draft one or more covenants and, in the latter case, whether those covenants should be ratified simultaneously.

21. The Third Committee also had to decide whether the list of rights given in part III of the text before the Committee was complete and whether the articles referring to those rights were drafted satisfactorily. The Committee had to give its views on the articles on measures of implementation.

22. Furthermore, it would be useful for the Commission on Human Rights to know the views of the General Assembly on the preamble and final clauses of the draft covenant, which the Third Committee had been unable to examine at the fifth session of the General Assembly.

23. With regard to those various questions, he stated that his delegation could see no reason for drafting two or more covenants, and thought it would be possible to include the various categories of rights and the measures of implementation pertaining to them in one instrument, without robbing the covenant of the clarity and precision which were indispensable to it. The Third Committee should therefore recommend the General Assembly to reaffirm the position it had adopted on that point in its resolution 421 (V). Nevertheless, the Guatemalan delegation would agree to modify its attitude if other delegations put forward convincing arguments against such a recommendation.

24. With regard to part III of the draft covenant, which included general clauses and articles on specific rights, he pointed out that paragraphs 1, 2 and 3 of article 19 contained considerations which would be better placed in the preamble which would introduce either the single covenant or the covenant on economic, social and cultural rights, as the case might be. Article 19, paragraph 4, and articles 31 and 32 related to all economic, social and cultural rights and should therefore be inserted at the beginning of part III.

25. The other articles of part III—articles 20, 21, 22, 23, 24 and 28, for example—which dealt with fundamental rights such as the right to work, the right to social security, and the right to education, merely acknowledged those rights. The covenant should not be limited, however, to establishing a scale of values similar to that in the Universal Declaration of Human Rights, but should state the principle of the responsibility of the State with regard to the implementation of fundamental human rights.

26. That principle was enunciated, rather weakly, only in articles 25 and 30 of the draft before the Committee. Article 25 stated that, with a view to implementing and safeguarding the right of everyone to the enjoyment of the highest standard of health obtainable, each State party to the covenant undertook to provide legislative measures to promote and protect health. Article 30 laid down that the States parties to the covenant should undertake to encourage by all appropriate means the conservation, the development and the diffusion of science and culture.

27. The Guatemalan delegation considered that that principle of the responsibility of States should be introduced into all the provisions of the draft covenant relating to economic, social and cultural rights. In its existing form the draft met the requirements of an unduly individualistic concept of society by confining itself to stating principles without laying down the obligation of States to use all available means to ensure the enjoyment of the rights which had been stated. Most of the articles in the draft covenant contained no provisions to that effect. Thus, article 26, on the protection of mothers and children, was not sufficiently imperative: instead of referring to the recognition of that right by States, it should say that States undertook to ensure the enjoyment of that right.

28. The Guatemalan delegation therefore proposed that part III of the draft covenant (E/1992) should be revised to define more specifically the obligation of States which was laid down in article 19, paragraph 4.

29. The Guatemalan delegation was convinced that, with the assistance of the specialized agencies, the United Nations Secretariat and non-governmental organizations, the Commission on Human Rights would succeed in drawing up a fully satisfactory text for submission to the General Assembly at its seventh session.

30. Articles 33 to 59, which constituted part IV of the draft covenant, provided for the establishment of a human rights committee composed of nine members; the secretary was to be appointed by the International Court of Justice, which would also elect the members of the Committee from a list of candidates submitted by the States parties to the covenant.

31. The representative of Guatemala thought there was insufficient justification for that proposal; the members of the committee should, in case of need, be selected directly from amongst the candidates of States parties to the covenant, by a procedure similar to that used by the General Assembly in appointing the members of the International Court of Justice and the International Law Commission. The representative of Guatemala agreed with the Secretary-General of the United Nations that, for administrative reasons, it would be better for the secretary of the committee to be a member of the United Nations Secretariat.

32. In accordance with article 52 of the draft under consideration, if a State party to the covenant considered that another State party was not giving effect to

the provisions of the covenant, it might, by written communication, bring the matter to the attention of that State. That article had formerly been article 38, to which the Guatemalan delegation had already raised objections in the previous year, on the grounds that it would permit a State to interfere in the affairs of another State and that, moreover, the procedure suggested in that article would not in practice be effective.

33. The Guatemalan delegation thought the right of petition must be granted to States parties to the covenant, to individuals, and to non-governmental organizations. Some delegations had expressed misgivings about granting that right to non-governmental organizations; there appeared, however, to be little ground for such misgivings, which were tending to disappear. The International Labour Organisation for example had already recognized that workers' and employers' associations, as well as governments, were entitled to submit to it complaints in infringement of trade union rights.

34. The Commission on Human Rights, at its sixth session, had examined proposals from several delegations on the right of petition, as well as a draft protocol submitted by the United States delegation regarding petitions from individuals and non-governmental organizations. That protocol was contained in annex V of the Commission's report (E/1992). The Commission had not had time to study the text of the draft. The Guatemalan delegation hoped that the Commission would be able to study it at its eighth session, and prepare a final text for presentation to the General Assembly during its seventh session.

35. The representative of Guatemala considered that a permanent United Nations office for human rights should be set up to collect and study information on all questions connected with the observance of the rights and freedoms proclaimed in the covenant, and to act on behalf of the international community as a whole. The Uruguayan delegation had submitted a proposal to that effect to the General Assembly at its fifth session.⁹ The Commission on Human Rights had not had time to study that question. The representative of Guatemala thought that the General Assembly should take a decision on that point and issue directives to the Commission on Human Rights accordingly.

36. Articles 60 to 69—part V of the draft—dealt with the reports concerning the progress made in achieving the observance of human rights which the States parties to the covenant undertook to submit periodically. The Commission on Human Rights had not decided whether those articles should relate to the covenant as a whole, or only to certain parts of it. But its intention was obviously to make them apply only to economic, social and cultural rights. That question would be settled by the decision taken by the Third Committee as to whether there should be one covenant or several.

⁹ See *Official Records of the General Assembly, Fifth Session, Annexes*, agenda item 63, document A/C.3/L.74 and Add.1.

37. Under existing conditions, economic, social and cultural rights required other measures of implementation than those deemed necessary for civil and political rights. In fact, the enjoyment of the rights in question was closely bound up with economic and social conditions in each individual country, and the measures of implementation recommended in the covenant should be such as to permit ratification by all countries.

38. The Guatemalan delegation approved the system of submitting periodical reports showing the progress made in each country. That system had to be supplemented by appropriate programmes worked out by the United Nations and by the specialized agencies, whose efforts to ensure the enjoyment of economic, social and cultural rights were particularly important.

39. The Secretary-General, in his memorandum (A/C.3/559), suggested that the Third Committee should examine the question of reservations which was not dealt with in the draft under consideration. The United Kingdom delegation had already suggested (E/1992, annex III) the text of a clause which would replace clauses 2 and 3 of article 1, and which would refer to the reservations States might make regarding certain provisions of the covenant. The Union of South Africa had also submitted proposals regarding reservations (E/1992, annex X, document E/CN.4/508), and Denmark had done so (E/1992, annex VI, section V) in respect of the application of the covenant to federal States.

40. The International Law Commission, in accordance with resolution 478 (V) of the General Assembly, had studied the question of reservations to multilateral conventions and proposed that, when such conventions were being drawn up, United Nations organs, specialized agencies, and Member States might consider the possibility of inserting clauses on the admissibility or non-admissibility of reservations, in order to avoid possible difficulties and differences of interpretation at a later stage.

41. The representative of Guatemala thought the Commission on Human Rights should be asked to draw up a clause on reservations to the covenant, taking due account of the advisory opinion given by the International Court of Justice in application of General Assembly resolution 478 (V), the conclusions of the International Law Commission, and the recommendations of the General Assembly.

42. He emphasized the exceptional importance of the covenant on human rights, by virtue of which alone human beings throughout the world would be able freely to enjoy their inalienable rights, and look with confidence to a future in which fears for international peace and security would at last have lost some of their alarm.

43. Mr. DE ALBA (Mexico) noted at the outset that the title of the draft covenant, in French and in Spanish, reflected ideas which were somewhat obsolete. The phrase *droits de l'homme* in the French, and the phrase *derechos del hombre* in the Spanish version of that title, meaning, literally, "rights of man", bore a

connotation of the liberal individualism professed at the end of the eighteenth century and during the nineteenth century which glorified man as an individual capable of determining and altering the course of history. At the beginning of the twentieth century, a new idea had emerged: the concept of man as a mere component of society. Between 1930 and 1940, philosophers and jurists had stressed the economic interdependence of peoples and strengthened the concept of the social community in which man was considered in relation to his fellowmen. The trials of the difficult years from 1939 to 1945 had strengthened the concept of solidarity and collective responsibility, and the Universal Declaration of Human Rights adopted in 1948 had been the result of those developments. At the same time, the equal rights of women, children and old people within the social group had been recognized. Consequently, the phrases *droits humains* and *derechos humanos* should be used in the French and Spanish texts, instead of *droits de l'homme* and *derechos del hombre*, which seemed unduly restrictive.

44. The representative of Mexico considered that all human rights should be dealt with in a single instrument. The Universal Declaration of Human Rights also constituted an indivisible whole, which could not be broken up because human rights were interrelated. The Third Committee and the General Assembly would be making a serious mistake if they reversed their decision: they could not establish priorities among rights which were equally important and equally difficult to implement, any more than they could break up the Declaration.

45. In some States, it was easier to implement economic, social and cultural rights than civil and political rights: it was easier to build a hospital than to revise a code. It would take years before all nations could enforce a covenant on human rights, for masses must first be educated and the mental attitudes of their rulers changed. He would mention only one example—the very much debated question of the right of petition to international bodies. He believed that any attempt to force adoption of the covenant would merely result in insoluble problems for the signatory countries.

46. The authors of the United Nations Charter had thought that there would be a gradual evolution towards an international conscience. They were seeing their hopes temporarily shattered by the recrudescence of nationalism. The peoples who had lately gained their independence and those who were still struggling to secure it felt that they must invoke nationalist feelings in order to assert their individuality and their right to self-determination. Nevertheless, the Universal Declaration of Human Rights had led them to embody several of its principles in their laws, for example the principles of human dignity and improvement in standards of living.

47. It was true also that other principles of the Universal Declaration of Human Rights were being applied as a result of the efforts of some of the specialized agencies, such as UNESCO, which fought for non-discrimination in schools, the International Labour Orga-

nisation, which promoted the principle of equal pay for equal work, and the World Health Organization and the Food and Agriculture Organization of the United Nations, which were fighting for biological rights. In order to make it possible for the greatest benefit to be derived from all that work, the task of drafting the covenant had to be brought to a successful conclusion.

48. For those reasons, the representative of Mexico considered that the Third Committee and the General Assembly should reaffirm the Universal Declaration of Human Rights and General Assembly resolution 421 (V). The Chilean draft resolution (A/C.3/L.180), which was based on indisputable facts, appeared to offer the best solution, and he would support it. He felt that the time had not yet come to discuss the draft covenant in detail in the General Assembly; it would be better to refer it back to the Commission on Human Rights for completion. That did not mean that he was criticizing the Commission, for it was conscientiously doing a thankless job. He did not think the number of countries on the Commission should be increased, although it would be useful if representatives of other Member States were to attend its sessions as observers.

49. The ideas he had expressed should not prove incompatible with those put forward by the United States representative. A single covenant could very well contain several separate chapters, just as the Universal Declaration of Human Rights consisted of several articles.

50. Finally, he would point out that one of the most important questions which must be solved was whether States should be permitted to make reservations in adhering to the covenant. He held that they should be allowed to do so, but stressed the responsibility which they would thereby assume. The issue should be studied by the Sixth Committee and then be referred back to the Commission on Human Rights. He also stressed the necessity of including in the draft covenant a chapter on co-ordination with other international bodies and the specialized agencies.

51. Mr. CASSIN (France) said that he would prefer to speak after the representatives of States which were not members of the Commission on Human Rights had asked for further information on the latter's work or had made suggestions. He would thus be able to reply to them.

52. Mr. NAJAR (Israel) recalled that as certain States had not considered it advisable to include economic, social and cultural rights in one and the same covenant with civil and political rights, the Economic and Social Council had advocated the revision of General Assembly resolution 421 (V). Furthermore, the Commission on Human Rights had been unable to finish the task which the General Assembly had entrusted to it in resolutions 421 (V) and 422 (V). It had neither revised the first eighteen articles, nor studied the federal clause or that relating to the rights of peoples and nations to self-determination. Nevertheless, the work accomplished by the Commission on Human Rights was of great importance.

53. Without commenting in detail, at that stage, on the articles of the draft covenant, he wished to make a number of general observations.

54. The Israel delegation thought it would be expedient to adopt a new classification of human rights. The excessive weight attached to the distinction between civil and political rights on the one hand and economic, social and cultural rights on the other, was largely due to the fact that those two categories of rights had been studied at a year's interval. The principle of the indivisibility of human rights must be reconciled with the fact that their implementation could be neither immediate nor identical in all cases.

55. In the case of certain rights, all that was necessary was that the State should ensure their observance by means of legislative or administrative measures, while seeing to it that they were implemented honestly and effectively. That was the case not only for civil and political rights, but also for certain economic, social and cultural rights, such as trade union rights, the freedom of parents to provide for the religious education of their children, maternal and child welfare and the combatting of propaganda on behalf of racial or other hatred.

56. On the other hand, there were other rights the effective and immediate existence of which did not depend solely upon the will of governments. That will had to be accompanied by the appropriation of considerable sums for the desired purposes, by the mobilization of national resources over a long period and, in some cases, even by active international co-operation. Such were, for instance, the rights relating to free, compulsory education, a minimum standard of living, social security, and the like.

57. His delegation considered that any useful classification of human rights should be based upon the foregoing considerations. It was possible to conceive of a method of implementation which would in practice be instantaneous in the case of all rights the actual existence of which depended essentially on the will of

the public authorities. Other methods, however, would have to be envisaged for the implementation of those rights which, to exist, required a large-scale and prolonged economic effort in addition to being desired by the legislative authorities.

58. In parts IV and V of the draft covenant, the Commission on Human Rights had proposed two methods of implementation, without stating to which categories of rights they should apply. Articles 60 to 69 stipulated that the States parties to the covenant should submit to a United Nations organ reports on the observance of human rights. In his view, that admirable method could be applied for all human rights without distinction. Some co-ordination, however, would be necessary since a number of specialized agencies had already submitted reports on economic, social and cultural questions.

59. Articles 33 to 59 dealt with the setting up of a human rights committee which would be seized of violations of human rights. That method of implementation should be applied only to rights the existence of which depended essentially upon immediate legislative and administrative action by the States signatories to the covenant on human rights. Noting that the right to submit cases of violation to the proposed committee had been reserved exclusively to governments, he expressed the conviction that that constituted a fundamental gap and that the right to petition should be extended to non-governmental organizations recognized as influential and responsible by the United Nations.

60. The fact that no procedure had been envisaged for urgent action in serious cases constituted another gap in the draft covenant. Finally, he suggested that the Commission on Human Rights should invite governments to comment also on parts III, IV and V of the draft covenant, as had been done in the case of the first eighteen articles.

The meeting rose at 1 p.m.