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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS
AND MEASURES OF IMPLEMENTATION

Observations of Governments received by the Secretary-General pursuant
to Economic and Social Council Resolution 501 B (XVI)

Canada

(Note of 2 March 1954 to the Secretary-General from the Secretary
of State for External Affairs of Canada)

The Government of Canada appreciates the motives underlying the Commission on Human Rights' endeavours to formulate international covenants intended to promote the enjoyment of the fundamental rights and freedoms by the peoples of the world. The Government of Canada is aware of the difficulties of the task with which the Commission on Human Rights is charged in preparing a covenant governing human rights which is to be applicable to many different legal and political systems and recognizes that the Commission must necessarily devote much care and time to such a task before it can complete covenants which will be widely acceptable. The fact that the Commission is working toward this end in itself helps to promote interest in and concern for human rights and freedoms. At the same time, the Government of Canada wishes to record its opinion that the articles of the covenants drafted to date contain many serious defects.

2. In Canada human rights and fundamental freedoms are enjoyed under the protection of our laws and free political institutions. These rights are observed and enforced in Canada on a basis rather different to that in some countries, because they are protected by judgments of the courts and by specific statutes rather than by general declarations, statements of principles or a bill of rights.

3. The views set out in this statement are in part a restatement and reaffirmation of the views previously transmitted to the Commission in 1951 and published in Document No. E/CN.4/515/Add.13 dated 16 March 1951. This statement includes also comments on the articles of the draft covenant on economic, social and cultural rights, and on those articles which have since been added to the draft covenant on civil and political rights. In particular, the Government of Canada feels bound to restate its view that it would not be proper for it to accede to any international covenant requiring the acceptance of obligations which, because of the nature of its constitution, it does not have the legal capacity fully to implement.

4. The Canadian authorities are continuing to give careful consideration to the draft covenants and may have further comments to make at a later stage.

FEDERAL STATE CLAUSE

5. The Commission on Human Rights was charged by Resolution 421 (c) (v) of 4 December 1950 of the General Assembly "to study a Federal State article and to prepare for the consideration of the General Assembly recommendations which will have as their purpose the securing of maximum extension of the covenant to the constituent units of federal states, and the meeting of the constitutional problems of Federal States". It is to be hoped that the Commission will be able to make recommendations to that end when it considers the question again, after receiving the draft resolutions and amendments and the record of the recent debate on this subject in the Third Committee which were transmitted to it by the terms of Resolution 737/(A) (VIII) of the General Assembly. Of the proposals for Federal State clauses outlined in Annex IIB of the Report of the Ninth Session of the Commission, the text which was proposed by the representatives of Australia, India and the United States at the eighth session of the Commission would be acceptable to Canada.

6. As stated most recently by the Canadian representative during the debate in the Third Committee on 11 November 1953, and in the Canadian statement published in 1951, the inclusion of a clause in the covenants recognizing the special position of federal states is of the greatest importance to Canada. In fact, in the absence of a satisfactory Federal State Clause, Canada could not

become a party to the covenants, due to the nature of its constitution which divides legislative powers concerning human rights between the national parliament and the provincial legislatures. It should be emphasized that a Federal State Clause, as opposed to a reserve clause, would not relieve a federal government of any obligation that it might be constitutionally capable of assuming.

TERRITORIAL (COLONIAL APPLICATION) CLAUSE

7. It is considered that the proposed Territorial Application Clause which provides that the covenants shall apply automatically and immediately to all dependent territories of metropolitan states, parties to the covenants, would be unworkable in practice. It is suggested that in the interest of wider acceptance of the covenants a clause be included which would facilitate the adherence of states with dependencies.

SELF-DETERMINATION CLAUSES

8. The principle of self-determination which is recognized in the Charter of the United Nations itself, is of the greatest importance and is deserving the fullest respect and support. The right of self-determination, however, is not so much a matter of individual human rights and fundamental freedoms as a collective right. For this reason the articles in both covenants concerning this right and article 48 of the draft covenant on civil and political rights, which provides for its implementation, are not considered to be appropriate for inclusion in covenants of this nature.

DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

9. In the statement of Canadian views published in 1951 it was pointed out that the content or scope of the articles then included in the covenant appeared to be generally satisfactory in that they covered the essential and fundamental civil rights. It was pointed out also that it appeared that residents of Canada enjoy all these rights, apart from the provision for compensation in the event of a miscarriage of justice, as provided in article 9 (5). Some detailed comments and suggestions concerning a few of the articles were made at that time

to illustrate their unsatisfactory form. Some of these criticisms are no longer applicable due to revisions to the draft, and others are restated in the attached Annex.

10. Of the new articles which have been added since, it is considered that articles 24 and 26 should be deleted for the reasons stated in the Annex. Some comments and suggestions on others of the new articles are also included in the Annex.

MEASURES OF IMPLEMENTATION

11. It is thought that the election of members to the Human Rights Committee by the International Court of Justice, as provided in Article 29, is not an appropriate duty with which to charge the Court. It would seem preferable not to involve the Court in non-judicial tasks which could be equally well performed by some other body such as the General Assembly or by the States, parties to the covenant.

12. Inclusion in the draft covenant of "provisions recognizing the right of petition of every natural person, every duly constituted group of individuals and every non-governmental organization", in accordance with one of the draft resolutions transmitted under the terms of Resolution 737 (B) (VIII) of the General Assembly to the Commission on Human Rights for its consideration at its Tenth Session, would, in the Canadian view, be inappropriate. The existing provision of the draft covenants that only signatory governments lay complaints is an adequate method of implementation. As the 1951 statement of Canadian views indicated, the adoption of the proposal set out in the draft resolution would give rise to great and novel difficulties and would over-burden the Committee on Human Rights which is to be set up under the covenant on civil and political rights.

COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

13. As stated in our 1951 comments on the draft covenants, the promotion of economic, social and cultural rights is a matter of great significance in the modern world and is the necessary basis for the fullest enjoyment of the traditional civil liberties. Generally speaking, however, it is not possible to protect and encourage such rights in the same way as civil and political rights,

because the two types of rights are of an entirely different nature. One type requires the curtailment of a government's powers, the other its extension. Civil and political rights are protected by limitations of powers of governments and legislatures to prevent them from interfering with the rights of the individual citizen. Economic, social and cultural rights, on the other hand, are matters which are the responsibility of governments and legislatures to promote by economic and social policies that usually require for their implementation detailed social legislation and administrative machinery. It is therefore appropriate that these rights should not have been included in the same covenant with civil and political rights.

14. In the previous statement it was suggested that it would be extremely difficult to reach any general agreement, at least without lengthy delays, on the formulation of these rights in a way that will give rise to workable and enforceable legal remedies. It is important that in any multilateral convention giving rise to legal rights and obligations the responsibilities to be undertaken be clearly defined. The vague generalities in which the existing draft covenant is couched indicate the need for revision and clarification. For instance, the steps outlined in articles 13 and 16 for achieving the full realisation of the rights in question are not susceptible of any clear-cut interpretation since the standards involved must vary considerably from one country to another. In fact, the difficulty of defining standards for measuring results is apparent throughout the covenant. The use of such subjective expressions as "fair", "decent" and "safe and healthy" in article 7 and "adequate" in articles 11 and 12 point up this difficulty.

A N N E X

Comments on the Draft Covenant on
Civil and Political Rights

- (a) Article 7 of the draft now reads: "No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected against his will to medical or scientific experimentation involving risk where such is not required by his state of physical or mental health". The second sentence suggests, in the final phrase, a dangerous exception which might be abused, and it would seem that the possible advantages to the progress of medicine would not be worth the sacrifice of principle involved. The first sentence of the article appears to cover adequately the subject of prohibition of torture or cruel punishment. The second sentence should, therefore, be altered so as to read "In particular, no one shall be subjected, without his free consent, to medical or scientific experimentation involving risk."
- (b) The right provided for in article 20 is expressed in a less direct way than similar rights in articles 18, 19 and 21. The limitation clauses in the four articles might be expressed in the same form and with the same expression, where possible, in the interests of uniformity of drafting and ease of interpretation.
- (c) Several phrases are used in various articles which may be given different meanings in different legal systems or when expressed in different languages. These include such terms as "arbitrary" or "arbitrarily" in articles 6, 9 and 17 and "public order" in articles 18, 19, 20 and 21. It would be useful if these and similar terms were defined.
- (d) Article 16 which provides, "Everyone shall have the right to recognition everywhere as a person before the law" is vague and should be clarified.
- (e) The inclusion of the word "opportunity" as well as "right" in article 23 will give rise to difficulties in assessing what the commitment involves. It is suggested that the word "opportunity" be deleted.
- (f) Article 24 which calls for the unconditional prohibition of discrimination on grounds of race, religion, etc. might provide the opportunity at some

subsequent date, for arguing that it is an exception even valid against clauses in articles which purport to provide for derogation. For instance, in article 12 derogation is permissible "as may be necessary to protect national security", etc. "consistent with other rights recognized in the covenant:" Presumably article 24 amounts to the recognition of the right to be free from discrimination absolutely. In certain circumstances it could thus render illegal prohibition ostensibly permitted by article 12. Since the rights which are the subject of this covenant are assured to all individuals in the national territory without distinction as to race, etc., in article 2, it is suggested that article 24 be deleted.

- (g) The provision of article 26 and in particular the clause, "that constitutes an incitement to hatred" involves subjective concepts which would be difficult to translate into legal concepts. In any event it would appear that what article 26 is intended to accomplish is already adequately provided for in article 19. It is therefore suggested that article 26 might be deleted without sacrificing any of the fundamental rights and freedoms.
- (h) The expression "competent authority" in article 13 is superfluous; the expression "in accordance with law" is the governing factor. It is suggested that the last phrase "for the purpose before the competent authority or a person or persons especially designated by the competent authority" be replaced by "before a person or persons designated for the purpose of such review."
