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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Observations by Governments

The Secretary-General has the honour to circulate, in accordance with resolution 833 (IX) of the General Assembly, the following observations by the Governments of Thailand and Australia.

5. Thailand

(Transmitted by note verbale dated 30 June 1955)

"I. Draft Covenant on Economic, Social and Cultural Rights  
(Document E/2573 - Annex I A)

Article 1, Paragraph 1: Right of self-determination

The enumeration of the rights covered by the definition of self-determination ('the right freely to determine political, economic, social and cultural status') seems incomplete. In effect it appears that the word 'political' has been interpreted narrowly so as to apply only to the selection of the 'political regime' (Monarchy, Republic, Federal System, etc.). This explains why some incidents have recently jeopardized the right of self-determination when it has been a question of the occupation of one country by another for the benefit of the latter. This has reflected undesirably upon the authority of the sanctity of the human rights to be applied by the United Nations. Consequently it is recommended that the words 'self-governing or dependent status' should be added to the enumeration, in order to make sure that no country shall be tied up to another country without the full agreement of the former, obtained, say, by way of plebiscite or otherwise. To support that interpretation, see draft covenant on civil and political rights, article 48.

Paragraph 3: Experience proves that it would be useful to enlarge the provision of this paragraph, which prohibits the deprivation of a people's own means of subsistence, as follows: 'on the grounds of any rights that may be claimed by other States, including provisions which may have been inserted by reason of contingent circumstances in a Treaty of Peace.'

Article 2, Paragraph 2: The word 'property' should be deleted. 'Property' is not 'a distinction of any kind...' as stated in the article. It must also be remembered that the inclusion of an article on the right of property in the covenant was proposed but the Commission on Human Rights decided 'to adjourn sine die consideration of the question of the inclusion of an article on the right

of property in the draft covenant on economic, social and cultural rights' (E/2573, paras. 70 and 71).

Article 6: One may wonder if the counter-part of this excellent article ought not to be to insist upon the prohibition of forced labour.

Article 7: It is suggested that sub-paragraph (a) be completed as follows: 'especially in the case of works which are dangerous for any reason (fire, toxic substances, explosions, etc.) by enacting protective regulations or by using and having permanently available implements which may be used in case of emergency'.

Article 10, Paragraph 3: To conform to this provision would be likely to make still worse the position of unmarried couples or mothers who are too frequently exposed in some countries to moral or social persecution. It is likely to reinforce an attitude of cruelty which has been so severely and earnestly reprovod by many writers and sociologists since the nineteenth century. It is assumed that a charter of human rights ought not to associate itself with that backward and much criticized attitude. Moreover, it should not be forgotten that concubines in certain countries have a social status (Mohammedan countries and some Asiatic countries). The second sentence of paragraph (3) should be deleted because it is only an opinion, which may lead to serious controversies. Silence would be better than a proclamation which runs the risk of creating reasonable dissatisfaction and the provision of article 25 of the draft covenant on civil and political rights should not be forgotten.

Article 11: The intention of this article is very good but it is likely to justify those criminal cases in which some offenders have been acquitted because they had stolen bread or other food in order not to die of starvation. In other words, excellent proclamations of this kind may always have many consequential effects of which the writer is generally unaware. It is suggested that the formula would be more complete and less misleading if drafted as follows: '... recognize the right of everyone to obtain adequate assistance in cases where he happens to be deprived of essential means of living such as food, place of sleeping, shelter against inclemencies of weather, etc.; and to claim an adequate standard of living and the continuous improvement of living conditions'.

Article 29: This article concerns amendments of the covenant. In principle its procedure, being rather lengthy, might be taken in itself as a sufficient guarantee of the opportunity to apply the amendments to all parties to the covenant, especially for the sake of uniformity. However, it is agreed with the Commission (E/2573, page 35) that, as far as those parties who have rejected the amendment are concerned, it would be excessive to bind them by its provisions since this would compel all parties to accept in advance to be bound by unknown amendments which might be inserted in the future. Consequently, paragraph (3) deserves to be supported."

"2. Draft Covenant on Civil and Political Rights (Document E/2573, Annex I B)

Article 1, Paragraphs 1 and 3: See comment under article 1 of the draft covenant on economic, social and cultural rights.

Article 2, Paragraph 1: See comment under article 2 of the draft covenant on economic, social and cultural rights.

Paragraph 3: Sub-paragraph (c) on remedies for violations of human rights is rather vague. It permits easy evasions of the enforcement required. The following wording is suggested: 'to organize a control by the said competent authorities in order to enforce, under due sanction inserted in the laws, the enforcement of such remedies when granted'.

Article 4, Paragraph 1: In the enumeration, one may wonder why the word 'birth' is not repeated since it is mentioned in the enumeration under article 2 (1).

Paragraph 3: In the communication to be made to other States parties through the intermediary of the Secretary-General of derogations made under article 4, it would be commendable to add: 'and communicate to them the official texts of the legislative enactments issued to that effect'.

Article 4 and Article 5 should be inverted because Article 4 appears to be a limitation of Article 5.

Article 6: It is suggested that this article which concerns capital punishment should include a provisions stating that 'capital punishment shall never be inflicted for a political offence which did not constitute also a non-political offence punishable by death.'

Article 7: It is suggested that it is insufficient to say that 'no one shall be subjected without his free consent to medical or scientific experimentation involving risk ...' and the phrase: 'involving risk or physical suffering or pain' should be added.

Article 9, Paragraph 3: The second sentence concerning persons awaiting trial would be much more decisive and imperative if it were written as follows: 'In case of persons awaiting trial, the general rule shall not be to detain them in custody but to release them subject to guarantees to appear, etc., etc.'

Article 11: It is agreed that inability to fulfil a contractual obligation must not be a ground for imprisonment. But, as it stands, the provision gives too many opportunities to persons of bad faith. It should be said: 'on the ground of inability not due to bad faith to fulfil a contractual obligation'.

Article 12, Paragraph 2 b: This article is not clear.

Article 13: This article is grammatically incorrect. The end of the sentence should read: '... be allowed to submit the reasons against his expulsion to, and to have his case reviewed by, and to be represented for the purpose before, the competent authority etc.'

Article 15, Paragraph 1: For the time being there is no penal international code in international law specifying or punishing criminal offences under international law.

Paragraph 2: (1) should be sufficient to protect the right of an accused to benefit by the most advantageous provision of law in criminal cases. The observation made for paragraph (1) also applies to this paragraph. One may wonder what are 'the general principles of law recognized by the community of nations' unless they are the provisions of the present draft covenant on civil and political rights which will be applicable in the future to the nations which have accepted to be bound thereby.

Article 16: This article is not clear.

Article 22: This article deals with a question of policy which, for many reasons concerning race, religion, economic interests, etc., should not be proclaimed in such a dogmatic way affecting all the nations of the world.

Article 24: Regarding the word 'property' see comment above under article 2 (1) of the draft covenant on economic, social and cultural rights. There may be a reservation, however, in the case of article 24: 'property' might perhaps be acceptable in article 24 because the question is not the same as in article 2 (1). In article 24 it is admissible to state that 'all persons are equal before the law without any discrimination on the ground of ... property ...' that is to say, that the extent of his fortune in immovable or movable property cannot be a consideration for or against his punishment and the morality thereof.

Article 29, Paragraph 1: In the list of nominations to be submitted by States parties for the election of the members of the human rights committee, it should be added that they should for each name summarize the qualifications, as prescribed in article 27, of the person nominated.

Article 33, Paragraph 1: The last words 'to four persons' should be deleted because in article 28 (2) the number of persons nominated by a State party may be less than four (two to four).

One may wonder whether the procedure for replacing a member of the Committee who has ceased to carry out his functions would not be quicker and easier if the vacancy was filled by selecting from among the persons remaining on the list of persons nominated by the States parties, but not previously elected.

Article 34: What if the vacancy is caused by death or other unavoidable necessity?

Article 35: The words 'having regard' should be replaced by 'due regard being given to ...'.

Article 38: Owing to the high standard required of the members of the committee, as may be fully assumed from the procedure laid down in articles 27 to 38 of the

covenant, this article should be deleted; it adds nothing to the confidence in and the moral responsibility of those members and looks somewhat surprising.

Article 41: This article is not clear. It is submitted that the intention is to say: 'Normally (?), the Committee shall deal with a matter referred to if only if it is satisfied that available domestic remedies have been involved and exhausted in the case. However, the committee shall not be bound to observe that rule if it is of the opinion that the application of the said remedies is unreasonably prolonged.'

Article 48, Paragraph 2: In case of Non-Self-Governing Territories, it is said that the political status of such Territories shall be determined by election, plebiscites, etc. undertaken by the States parties responsible for the administration of those Territories. Please refer to the note in this memorandum under article 1 (1) of the draft covenant on economic, social and cultural rights above. The words 'political status' should not concern exclusively, as has been explained above, the political form of government, but also the right to select as between a 'self-governing or dependent status'. Article 48 seems to embody that interpretation, but it should be made clear that the words 'political status' are irrefutably given that full meaning or, if there is any doubt, the words 'self-governing or dependent status' should be added as proposed in the comment on article 1 (1)."

"3. Observations on the Proposals and Amendments relating to Reservations  
(E/2573, Annex II)

A.I. (a): Draft Article proposed by the United Kingdom of Great Britain  
and Northern Ireland

Para. 1: (concerning the laws in force in the country adhering to the covenant and reservations to Part III of the covenant)

This paragraph should be rejected because States parties must amend their own laws in order to conform to the covenant signed by them. However, see the observations below on paragraph 1 of the draft article proposed by China, Egypt, Lebanon and the Philippines.

Para. 4: (Special procedure concerning reservations).

No objection.

Para. 5:

Same opinion as for para. 1 above.

A.I. (b): Amendments by the Union of Soviet Socialist Republics

Para. 1:

The policy underlying this amendment is the same as that of the draft article proposed by the United Kingdom and is subject to the same observation.

A.II (a): Draft Article proposed by China, Egypt, Lebanon and the Philippines

Para. 1:

This provides that reservations may be made at the time of signature and ratification or acceptance. As drafted, it does not give rise to the same objections as the above proposal by the United Kingdom and the U.S.S.R. amendment, and may be accepted as a general rule concerning reservations.

Para. 2:

This paragraph, which authorizes any State party to object to a reservation which is incompatible with the object and purpose of the covenant is deemed to be an excellent provision and should be accepted.

Para. 3:

The same observation applies to this paragraph, which concerns the reference to the International Court of Justice of a dispute as to whether or not a particular reservation is compatible with the object and purpose of the covenant.

Para. 4:

This paragraph, which is a complement of the preceding paragraph, should be accepted.

Para. 5: (Withdrawal of reservations or objections)

No objections.

A.II (b): Amendments by the Union of Soviet Socialist Republics

Para. 2:

No objection, since it is a fact that reservations must be taken into consideration when they have been duly made.



A.III: Draft Article proposed by Chile and Uruguay

This draft article stipulates that no State party to the covenant may make reservations in respect of its provisions. This is contrary to the policy underlying paragraph 1 of the draft article proposed by China, Egypt, Lebanon and the Philippines, which has been declared as acceptable in this Note.

B.I.: Amendment by the United Kingdom of Great Britain and Northern Ireland to article 26 of the draft covenant on economic, social and cultural rights and article 51 of the draft covenant on civil and political rights

This amendment is much more detailed than the original text and is preferred for that reason. It also has the advantage of referring to the question of reservations, which is not mentioned in the original text."

## 6. Australia

(Transmitted by note verbale dated 20 July 1955)

The Australian Government wishes to offer the following comments on the draft covenant on economic, social, and cultural rights and the draft covenant on civil and political rights. The right to submit other comments during further discussion of the covenants is reserved.

### A. Draft Covenant on Economic, Social, and Cultural Rights

#### Article 1

Australia proposes the deletion of Article 1 on the following grounds:

(a) Self-determination is referred to in the Charter as a principle.

It is nowhere referred to as a right:

(b) It is denied that "self-determination" can properly be regarded as a right but, if it were a right, it would be a collective right, not an individual right. Since the Covenant is concerned with individual human rights, Article 1 is inconsistent with the object and pattern of this Covenant;

(c) The transformation of the principle of self-determination into a justiciable right in the terms of Article 1 would violate Article 2 (7) of the Charter.

#### Article 15

The principle of free and compulsory primary education is protected in Article 14 and its implementation is provided for in Article 2.

Australia proposes the deletion of Article 15.

#### Article 26

Australia prefers the text of Article 26 proposed by the representative of the United Kingdom of Great Britain and Northern Ireland (E/2573, Annex II B) depending upon the adoption of an appropriate Article on the admissibility of reservations.

Article 27

General Assembly resolution 421 C (V) requested the Human Rights Commission to study ways and means by which the provisions of the two Covenants might be extended to the units of federal states, and by which the constitutional problems of such states could be met. Article 27 fails to meet the intention of resolution 421 C (V). Australia proposes the consideration of the following text:

"1. A federal State may at the time of signature or ratification of, or accession to, this Covenant make a declaration stating that it is a federal State to which this article is applicable. In the event that such a declaration is made, paragraphs 2, 3 and 4 of this article shall apply to it. The Secretary-General of the United Nations shall inform the other States Parties to this Covenant of such declaration.

2. This Covenant shall not operate so as to bring within the jurisdiction of the federal authority of a federal State making such declaration, any of the matters referred to in this Covenant which, independently of the Covenant, would not be within the jurisdiction of the federal authority.

3. Subject to paragraph 2 of this article, the obligation of such federal States shall be:

(a) In respect of any provisions of the Covenant, the implementation of which is, under the constitution of the federation, wholly or in part within federal jurisdiction, the obligations of the federal government shall, to that extent, be the same as those of Parties which have not made a declaration under this Article;

(b) In respect of any provisions of the Covenant, the implementation of which is, under the constitution of the federation wholly or in part within the jurisdiction of the constituent units (whether described as States, provinces, cantons, autonomous regions, or by any other name), and which are not, to this extent, under the constitutional system bound to take legislative action, the federal government shall bring such provisions with favourable recommendations to the notice of the appropriate authorities of the constituent units,

and shall also request such authorities to inform the federal government as to the law of the constituent units in relation to those provisions of the Covenant. The federal government shall transmit such information received from constituent units to the Secretary-General of the United Nations, who shall communicate them to the States Parties to the Covenant;

(c) Subsequently, the federal government shall notify the Secretary-General, for communication to States Parties to the Covenant, the legislative or other measures which the above-mentioned units have taken in implementation of the provisions of the Covenant.

4. A contracting State shall not be entitled to avail itself of the present Covenant against other contracting States except to the extent that it is bound by the Covenant."

#### Article 28

Australia opposes Article 28 and recommends reconsideration of the text submitted at the 6th session of the Human Rights Commission:

"At the time of deposit of its instrument of ratification or accession, each State which is responsible for the external relations of other territories shall declare to which of such Territories this Covenant extends and the reasons why the Covenant has not been extended to the remainder. As from the date of receipt by the Secretary-General of the Declaration, the Covenant shall extend to each territory to which a State declares it to extend. Each such state shall take as soon as possible the necessary steps to have the application of this Covenant extended to all such territories, subject where necessary for constitutional reasons to the consent of the Governments of such territories."

An article on reservations may be found to be required, after review of the provisions of this Covenant.

B. Draft Covenant on civil and political rights

Article 1

Australia proposes the deletion of Article 1 for the reasons stated in the comments on the draft Covenant on Economic, Social, and Cultural Rights.

Article 6

Objection is taken to the use of the word "arbitrarily" in Article 6.

Two elements have engaged the attention of the draftsmen during the preparation of the Article. These may be described as, firstly, expression of what might be termed a traditional imperative of all civilized societies - "Thou shalt not kill" - and, secondly, some positive provision concerning the right to life which, although not defined in the Covenant or in the Universal Declaration, may be assumed to mean the right of every person to preservation and enjoyment of his existence as an individual. In the earlier drafts, attention was concentrated on the first element, but at the sixth session of the Commission attention was given to the second element by providing that "the right to life shall be protected by law". This second element is retained intact in the present draft, but the first element is now expressed by the sentence "No one shall be arbitrarily deprived of his life".

There is no indication in this Article or elsewhere in the Covenant as to what "arbitrarily" means in this context. No common view has ever been reached by the Commission as to the meaning of this expression here or elsewhere in the Covenant, or even where it occurs in the Universal Declaration, and the meaning of the expression remains in dispute. There is no other provision in this Article, or elsewhere, in the Covenant, setting limits to the taking of life. Paragraph 2 of the Article deals with capital punishment, but that merely sets limits to lawful execution; paragraph 4 deals with a special situation. The effect of the sentence appears rather more clearly if it is stated in an alternative form, such as - "The deprivation of anyone's life, if done arbitrarily, is prohibited". Thus, only one limit is set to the taking of life and that a vague one; apart from that unsatisfactory qualification, the

deprivation of life is unprohibited. No justifiable exceptions to the prohibition are indicated, except as regards capital punishment in paragraph 2, which applies to certain countries only.

In the view of the Australian Government it is desirable that both elements should appear in the Article, but the first element could hardly be expressed with greater inexactitude than it is in the sentence under discussion, and, rather than that the ancient law should be dressed up in such a fashion, it would be better to delete the sentence.

With a view to reconsideration of the text of the Article the following redraft is proposed -

1. Everyone's right to life shall be protected by law.
2. The death penalty, where it exists, shall be confined to the gravest crimes. It may only be imposed by a competent court, following a conviction for such a crime, in accordance with law that is not contrary to the provisions of this Covenant.
3. } as in existing draft Article."
4. }

Notes: The wording in the existing draft is "not contrary to the principles of the Universal Declaration of Human Rights". The intention of these words was, presumably, to secure that the law was not one that violated the principles of non-discrimination (Article 2), equality before the law (Article 7); fair trial (Article 10), and presumption of innocence and non-retroactivity of law (Article 11). Since all these principles have been translated into specific texts in the Covenant, the character of the law is secured more effectually by referring to the provisions of the Covenant, instead of the principles of the Universal Declaration.

The reference to the Convention on the Prevention and Punishment of the Crime of Genocide has been omitted. In the Convention, genocide is defined as "any of a number of specified acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such". Thus the Convention is confined to groups as such, whereas the Covenant, apart from Articles 1 and 48, is confined to individuals as such. There is therefore no

conflict, or overlapping, of the one in relation to the other, and the Covenant, as it stands, cannot operate so as to supersede, modify or prejudice the Convention or any of its provisions. Consequently, the reference to the Convention appears to be unnecessary and redundant.

#### Article 9

Australia also objects to the use of the word "arbitrary" in Article 9. The relevant sentence is "No one shall be subjected to arbitrary arrest or detention". Like the corresponding expression in Article 6, "arbitrary" is undefined, and there has been no consensus as to its meaning.

#### Article 26

Australia proposes deletion of the word "hatred" in Article 26. The word "hatred" involves a subjective notion not lending itself to legal regulation but opening the way to a system of censorship and all the possible evils associated with such a system.

#### Article 48

Australia opposes the inclusion of Article 48 in the Draft Covenant on the grounds that:

- (1) The deletion of Article 48 would necessarily follow from the deletion of Article 1.
- (2) The obligation involved in this article (to hold elections, plebiscites, etc. at the request of the United Nations) is one which governments administering non-self-governing territories have rejected, both in the discussion of the Charter at San Francisco and subsequently in the interpretation of the provisions of Chapter XI of the Charter.

#### New Article

The draft of this Covenant as adopted by the Commission of Human Rights at its eighth session (E/2256) contained an article numbered 53 as follows:

"The Committee shall deal with any matter referred to it under Article 52 (now Article 40) save that it shall have no power to deal with any matter:

(a) For which any organ or specialized agency of the United Nations competent to do so has established a special procedure by which the States concerned are governed; or

(b) With which the International Court of Justice is seized....."

On revision by the Commission at its ninth session this Article was rejected. Australia urges the reinstatement of the article. Without some such provision, there is the possibility of conflicts of competence in relation to certain matters that, being within the competence of the Human Rights Committee, would also be within the competence of the International Court or other organs, or of specialized agencies of the United Nations. The purpose of the Article is to delimit the competence of the Human Rights Committee in relation to such matters, and so avoid conflicts of competence and resulting confusion.

#### Article 51

Australia submits the alternative text contained in the comments on Article 26 of the other Covenant.

#### Article 52

Australia opposes Article 52 and proposes the adoption of a text identical to that contained in the comments on Article 27 of the other draft Covenant.

#### Article 53

Australia opposes Article 53 and proposes the adoption of a text identical to that contained in the comments on Article 28 of the other draft Covenant.

#### Reservations

Australia favours the adoption of a reservation clause along the lines of the text proposed by the representative of the United Kingdom of Great Britain and Northern Ireland (E/2573, Annex II A), the precise terms of which will be dependent upon the nature of the substantive clauses of the Covenant in its final form.